**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG LOCAL DIVISION, PRETORIA**

Case Number: 2025-077606

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

[redacted]

DATE SIGNATURE

In the matter between:

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| **AXON GROUP 222 (Pty) Ltd** | First Applicant |
| **KILNERPARK SECURITY CC** | Second Applicant |
| and | |
| **ANSEHELISE VAN DER KOOI** | First Respondent |
| **BRINANT GROUP MOOT BRANCH** | Second Respondent |

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**JUDGMENT**

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RAJAB-BUDLENDER AJ

*Introduction*

[1] This matter came before me in the urgent court. The Applicants apply for urgent final interdictory relief against both Respondents premised on a restraint of trade

clause in the contract of employment concluded between the Second Applicant and the First Respondent. The First Respondent was an employee of the Second Applicant from 1 May 2016 until her resignation on 18 March 2025. The First Respondent began working for the Second Respondent on a full time basis immediately after her resignation from the First Applicant. Both the Applicants and the Second Respondent are security companies situated in very close proximity, in fact next door to each other. The Second Applicant was bought by the First Applicant as a going concern, on or about 10 March 2025.

*The Relief Sought*

[2] The Applicants seek to interdict the Second Respondent from acting in breach of the restraint of trade provisions set out in her contract of employment with the Second Applicant. Specifically, they seek an order interdicting her from:

a. directly or indirectly engaging with Brinant Group in business or activities that competes directly or indirectly with Kilnerpark Security, be it as shareholder, partner, member of a close corporation, director of a company or in any other capacity within 3 years after the termination of the First Respondent's employment agreement ("the Restraint Period");

b. directly or indirectly engaging with any other security services provider in business or activities that compete directly or indirectly with the Second Applicant, be it as shareholder, partner, member of a close corporaton, director of a company or in any other capacity within the Restraint Period;

c. during the Restraint Period having any interest, whether directly or indirectly and whether financial or otherwise, in any corporate entity, company, close corporation, partnership, proprietorship, person, trust entity, or other business which competes or is likely to compete with the Second Applicant's business within the Pretoria area;

d. during the Restraint Period, working or being engaged in the Pretoria area as an employee, independent contractor, agent, advisor, broker or

otherwise for remuneration or for free for any corporate entity, company, close corporation, partnership, proprietorship, person, trust entity, or other business which is directly or indirectly engaged or interested in competitive activity with the Second Applicant;

e. During the Restraint Period, imparting the knowledge acquired to the Second Respondent; and

f. During the Restraint Period, and for any reason whatsoever encourage or entice or incite or persuade or induce any employee, client, or consultant of the Second Applicant to terminate his/her employment, service level agreement or consultancy with the Second Respondent.

[3] The Applicants further seek to interdict the First and Second Respondents from unlawfully competing with the Second Applicant by:

a. Misusing the Second Applicant's Confidential Proprietary Information (as set out in the application) to advance their own and the Second Respondent's business interests, at the Second Applicant's expense;

b. Unfairly utilising the Second Applicant's existing and/or prospective contractual relations through the unlawful utilisation of the Second Applicant's Confidential and Proprietary Information;

c. Interfering with the Applicant's existing and/or prospective contractual relations through the unlawful utilisation of the Second Respondent's Confidential and Proprietary Information;

d. Interfering with the 2nd Applicant's employees and workforce by approaching such employees and offering them employment and certain benefits;

e. contacting the existing clients of the Second Applicant.

[4] A cursory review of the relief sought makes clear that the relief sought against both Respondents, in particular, the First Respondent – is extensive and, as I set

out below, goes far further than the contractual clause on which the relief against the First Respondent is premised.

*The essential context*

[5] The Second Respondent was employed as an administrative assistant on a half day basis by the Second Applicant. She says that she born in Pretoria and has lived there all her life. She is a divorced single mother and provides for her 2 children. Other than working in a bar before she was employed with the Second Applicant, she has never been employed and has no experience in any other industry. She was employed on a half day basis by the Second Applicant. In order to make ends meet she operated a facial salon in her free hours. She is currently employed full time by the Second Respondent. She alleges that the relief sought by the Applicants would unduly restrict her freedom to work in the only industry she has any experience in and the restraint is unreasonable. She and the Second Respondent both state they do not have any of the Applicant's confidential or proprietary information in their possession nor are they making use thereof.

[6] The Second Applicant is a well-known security company in the Moot area of Pretoria and is the Second Respondent's biggest competitor in the area. In short the Applicant's case is that the provision of security services is a price sensitive business and that the First Respondent had access to the clients of the Second Applicant and had built up a relationship with them over the course of her employment. She also had knowledge of the pricing structure and other unspecified confidential information of the Second Applicant. She used this information and knowledge to seek to lure away staff and clients from the Applicants to the Second Respondent's business. This, the Applicants contend, is in conflict with the terms of her Employment Contract.

[7] The relevant clause of the First Respondent's employment contract reads as follows:

> *"Employee agrees that any and all knowledge or information that may be obtained in the course of the employment with respect to the secret processes, formulas, machinery etc used by the employer in*

*manufacturing and distribution of its product will be forever held inviolate and be concealed from any competitor and all other persons and that he or she will not engage as employer, employee, principle, agent or otherwise, directly or indirectly at any time in a similar business and that he or she will not impart the knowledge acquired to anybody and that should he or she at any time leave the employ of the employer he or she agrees not to enter into the employ or service or otherwise act in aid of the business of any rival company or concern or individual engaged in the same or similar lines of business for the period of 3 years."*

[8] In relation to the Second Respondent, the Applicants' case is less clear and certainly not pleaded with any measure of clarity or substantiation on the papers. However, it would appear that the case against the Second Respondent is that in contacting clients of the Applicants, it's conduct constituted an unfair business practice which was conducted according to the founding affidavit "*with the knowledge and information they obtained from the First Respondent and which was in breach of the previous employment details of the First Respondent*."

[9] The Applicant further alleges in one sentence in the founding affidavit that the actions of the First Respondent are attributable to the Second Respondent on the basis of her employment by the Second Respondent. That is the extent of the case made out against the Second Respondent.

*Self-created urgency*

[10] It is common cause that the Applicants were aware that the First Respondent had become employed by the Second Respondent virtually as soon as she started working there on or about 19 March 2025.

[11] This raises an immediate difficulty for the Applicants: Why did they wait until 30 May 2025 (some 10 weeks later) to approach the urgent court?

[12] Counsel for the Applicants indicated that:

a. Although his clients were aware of the First Respondent becoming employed by the Second Respondent shortly after 19 March 2025, they chose not to enforce the restraint of trade against the First Respondent for a period of approximately two months because they felt sorry for her that she was a single mother.

b. However, when it became clear to them that she was involved in calling clients of theirs and that the Second Respondent was trying to poach staff members, they investigated and then decided to bring the present application.

[13] There are a number of difficulties with these contentions.

[14] First, whatever the motivations of the Applicants, it is not entitled to "blow hot and cold". It cannot know that the Second Respondent is employed by the First Respondent, do nothing about this (not even via a written warning drawing attention to the restraint clause or seeking any undertakings) and then suddenly approach the urgent court some 10 weeks later.

[15] Second, if the Applicants wished to change their stance and seek to justify this, they needed to place detailed facts before the Court to explain this change of stance in respect of the First Respondent.

a. Yet, the Founding Affidavit is notably short of dates on which the Applicants became aware of what they say triggered their concerns, and when they conducted an investigation into the First and Second Respondents' conduct. The only date of assistance in the founding affidavit is that of 22 May 2025 when the deponent states that his attorney spoke to one of the Applicants' clients and convinced him to assist them.

b. Moreover, what is clear from the annexures to the founding affidavit is that certain of the Applicants employees had been contacted on 15 and 28 April 2025 by the Second Respondent. All the statements from employees attached to the founding affidavit are dated 20 May 2025 so it is reasonably accepted that the Applicants were aware before this that their employees had been contacted. The statement by Mr Partridge who is the CEO of the

First Applicant indicates that he was notified of concerning conduct by the Respondents on 19 May 2025.

c. Yet, this Application was launched on 30 May 2025.

[16] It is therefore clear that the Applicants did nothing for two months after becoming aware that the First Respondent was employed by a competitor, in circumstances where their cause of action against her is premised on the contention that such employment breached the restraint of trade. In fact on the Applicants' own version, they were aware that she was employed by the Second Respondent and chose not to enforce the restraint of trade.

[17] There is no evidence on the papers that the Applicants wrote to the First Respondent and placed her on notice that she was contravening her contract or gave her any other indication that she was in breach of her contract with them or sought undertakings to avoid prejudice.

[18] In my view, therefore, any urgency in this application has been self-created. On this basis alone, the matter is not deserving of being dealt with on the urgent roll.

[19] Moreover, and in any event, there are considerable doubts about whether the applicants have shown any urgent risk of harm justifying a final interdict. No evidence has been placed before me to suggest that the offending conduct alleged against the First Respondent is ongoing. Only one statement of a client (not under oath) who says he was contacted on 5 May 2025 by the First Respondent is attached to the papers. That is not sufficient:

> *"[T]he procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant*

*because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress."*[1]

[20] In relation to the Applicants' case against the Second Respondent, similar difficulties apply. That case is premised on the Second Respondent's employment of the First Respondent. But, as indicated, the Applicants on their own version knew of this ten weeks before launching this application.

[21] I am therefore of the view that the application does not meet the well-trodden requirements for being dealt with on the urgent court roll. It must therefore be struck from the roll.

*Substantive difficulties*

[22] In light of this conclusion, it is not strictly necessary for me to comment on the merits. However, given the benefit of having had argument on this score and without making any final finding, I point out that the Applicants' case also faces significant substantive obstacles.

a. Most notably, it is by no means clear that the restraint of trade clause in the employment contract is applicable to the First Respondent or to the business of the Second Applicant.

b. Counsel for the Applicants correctly accepted in argument that the clause was clearly copied from a contract used for a different industry.

c. The clause provides that the employee will not use "*knowledge obtained in the course of employment <u>with respect to the secret processes, formulas, machinery etc used by the employer in manufacturing and distribution of its prod</u>uct. . . and that he or she will not engage as employer, employee, principle, agent or otherwise, directly or indirectly at any time in a similar business and that he or she will not impart <u>the knowledge</u> <u>acquired</u> to anybody" (my emphasis)*

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[1] *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 at para 6, cited in *In re: Several matters on the urgent court roll* 2013 (1) SA 549 (GSJ) at para 7.

d. The Applicants do not use “secret processes, formulas, machinery etc in the manufacturing and distribution of its product.” The Respondents foreshadowed this disconnect between the restraint clause and facts of the Applicants’ business in their answering affidavit – this is not addressed in the Replying Affidavit.

e. The Applicants do not manufacture products but rather provide a service to customers through the provision of security. At most they install equipment as part of a security system which they have not manufactured. No evidence was placed before me to the contrary. Counsel for the Applicant attempted to argue that “secret processes” could refer to the process of determining pricing structures. The flaw in this argument is that the clause must be read as a whole. Therefore “secret processes” must be read in the context of the sentence in which it is located. Therefore at issue is knowledge“ *with respect to the secret processes, formulas, machinery etc used by the employer in manufacturing and distribution of its product.”*

f. Given all of the above, it is by no means clear to me that the clause concerned – which is the foundation of the case for the applicants - even applies in the present context. But, as mentioned, it is not necessary for me to reach a final decision in this regard.

**Order**

[23] In the circumstances, I make the following order:

a. The application is struck from the urgent roll.

b. The Applicants are ordered to pay the Respondents’ costs on Scale C.

[redacted]

N. Rajab-Budlender

Acting Judge of the High Court, Pretoria

20 June 2025

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| For the Applicant: | Adv E. Janse Van Rensburg<br>Baartman Du Plessis Attorneys |
| For the Respondent: | Adv S. Nel instructed by Weavind & Weavind Inc. |