

SOUTH AFRICA / JUDGMENT

Forsure (PTY) Ltd v Puckle and Another (J727/2022) [2022] ZALCJHB 221 (12 August 2022) [2022] ZALCJHB 221

COURT

Labour Court Johannesburg

BEFORE

Nkutha-Nkontwana

CASE / FILE NUMBER

J727/2022

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

no: J727/2022

In

the matter between:

FORSURE
(PTY)
LTD
Applicant
And
BYRON
ROBERT
PUCKLE
First Respondent
UBERSURE
INSURANCE BROKERS (PTY) LTD
Second Respondent

Heard:

2 August 2022

Delivered:	12 August 2022 (This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court's website and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 12 August 2022.)
Summary:	Restraint of trade – restraint is unreasonable in relation to the nature of the protectable interest – enforcement of an unreasonable restraint on a person's freedom to trade will be contrary to the public interest.

JUDGMENT

NKUTHA-NKONTWANA, J

Introduction

- [1] The applicant (Forsure) launched this urgent application seeking an order interdicting and restraining the first respondent (Mr Puckle) from breaching the terms of the restraint of trade agreement and confidentiality undertaking concluded on or about 12 May 2021 (restraint covenant).
- [2] It is common course that Mr Puckle bound himself to the restraint of trade covenant, in favour of Forsure and its terms can be summarised as follows:
- 2.1. He would not, inter alia, directly or indirectly carry on or be interested or engaged in or concerned with or employed by any company, close corporation, firm or undertaking or concern which competes with the business of Forsure;
- 2.2. The restraint period would be 24 months after the termination of his employment with Forsure;
- 2.3. The restraint area would be within each magisterial district of the Republic of South Africa; and
- 2.4. He would not disclose Forsure's confidential information or trade secrets.
- [3] Mr Puckle is the only respondent opposing the application and he also takes issue with urgency and with the fact that the notice of motion allows him to file a duplicating affidavit, if any. I deem it expedient to quickly dispose of Mr Puckle's points in limine.

Urgency

- [4] The impugn on urgency seems to be solely that Forsure launched this application on 22 June 2022 when it became aware that Mr Puckle took employment with the second respondent (Ubersure) on 3 June 2022. It is not in dispute that Forsure sought an undertaking from Mr Puckle that he would desist from contravening his obligations in terms of the restraint covenant but to no avail.
- [5] In any event, it is well accepted that enforcement of a restraint covenant is inherently urgent because the rights sought to the

protected are time bound.[1] While it holds true that the requirements for urgency still apply, this is not a typical matter where urgency has been squandered by dilatory conduct on the part of Forsure.[2] I accordingly, accept that the matter is urgent and I deal with it as such.

Duplication affidavits

- [6] Mr Puckle impugns Forsure's provision for the filing of duplication affidavit in the notice of motion. To buttress this contention, Mr Puckle referred to DIY Superstores (Pty) Ltd v Kruger and Another[3], where, confronted with a similar issue, the court made the following commented as follows:

'[30] Mr Grobler relied during oral argument on a case not referred to in his heads of argument, to wit Kwikspace Modular Buildings v Sabodala Mining CO SARL,[4] in order to convince me that DIY did not have to explain in its founding affidavit why public policy did not come into play in casu and also why it was unnecessary to set out facts to show that the restraint was necessary to protect its business interests. Therefore,

he submitted that insofar as DIY dealt with these issues in detail in the replying affidavit, it was expected of Kruger to obtain leave from the court to file a fourth set of affidavits in order to try and counter DIY's version in reply which he failed to do. It was submitted that without a response from Kruger in a further affidavit, DIY's version stands unchallenged and that the issues of public policy and the threat of applicant's business interests are not live anymore. This is not the law. The court must consider all the evidence and also bear in mind the manner in which opposed motions should be adjudicated, i.e. on the respondent's version, unless it is so far-fetched that it stands to be rejected. I reiterate that the approach in Basson v Chilwan has stood the test of times. I do not intend to repeat it. The test was applied in numerous judgments thereafter. A court should always consider the reasonableness of a restraint of trade and whether or not it offends public policy. I referred to several other judgments dealing specifically with restraints of trade above, but the reader is also reminded to

consider the Beadica judgment of the Constitutional Court and the Capitec Holdings judgment of the Supreme Court of Appeal that deal with contracts in general – the pacta servanda sunt principle and the effect of fundamental constitutional values upon contracts freely entered into.

- [31] I noted from the notice of motion that DIY provided for "further affidavits to be filed by 10 February 2022", three days after the filing of its replying affidavit. I must say I find it astonishing that an applicant may reserve the right for the respondent to file a fourth set of

affidavits. Only three sets of affidavits are permitted in motion procedure although further sets of affidavits may be allowed by the court in exceptional circumstances and upon application for leave by the particular party. It is trite that a party electing to make use of motion procedure must make out a case for relief in the founding affidavit.’ (Emphasis added)

- [7] I am equally astounded by Forsure’s move to reserve a right for Mr Puckle to file a fourth affidavit contrary to the trite practice in motion proceedings. As a rule, in motion proceedings the Court will not allow the applicant party to insert facts in a replying affidavit which should have been in the founding papers.[5] Even though this rule is not rigid and inflexible, a party is allowed to raise a new matter in reply if there are special circumstances.
- [8] Nonetheless, the converse is true in the present instance. Forsure knew before it instituted these proceedings that Mr Puckle has taken up employment with Ubersure. Yet, there is no explanation proffered for not comprehensively pleading its case in the founding affidavit. Even so, since Mr Puckle has sought leave to file a fourth affidavit, I am incline to grant the leave sought in order to allow a proper ventilation of the issues between the parties in a fair manner.

Pertinent

facts

- [9] Forsure seeks a final relief and as a general rule, a final order can only be granted in motion proceedings if the facts stated by the respondents

together with the admitted facts in the applicant’s affidavits justify the order, a notion commonly known as Plascon Evans.[6] This applies irrespective of where the onus lies.[7] As such, I deal only with the factual matrix that is pertinent for deciding this application.

- [10] Forsure was established on 1 April 2021 and is an insurance brokerage focusing on exclusive short-term and personal lines insurance and is part of the Badger group. It offers short-term insurance products (car, home and business insurance products and services). It is common cause that in the car insurance business, Forsure’s particular forte is in the dealer space and provides car insurance products to clients through its relationships with car dealerships across South Africa.
- [11] On 1 April 2021, Puckle took up employment with Forsure but he only signed a written contract of employment on 12 May 2021. His title is in dispute. Forsure contends that he was a Senior Executive Sales Consultant. But Mr Puckle claims he was just a mere Dealer Sales Consultant with no supervisory responsibilities. That evidence is supported by his pay slip and remains uncontroverted.

- [12] Mr Puckle resigned on 1 February 2022 and his last working day was 31 March 2022. Forsure contends that it was clueless about his intention to join its competitor. As a result, Mr Puckle was granted time off to attend interviews, permitted to remain on WhatsApp groups with Forsure's clients after his departure, and Forsure hosted a farewell braai for him. Prior to Mr Puckle's departure, he was reminded of his obligations in respect of, inter alia, the restraint covenant and that Forsure reserves its right to recourse in the event of a breach thereof.
- [13] On 20 May 2022, Mr Stephen Williams (Mr Williams), the sole Director of B-Sure Africa Insurance Brokers (Pty) Ltd (B-Sure) and Ubersure (B-Sure Group), called Mr Ryan Hynes (Mr Hynes) of Forsure asking whether Mr Puckle would be allowed to take up employment with B-Sure and be released from his restraint of trade obligations. On 23 May 2022, B-Sure was informed that Forsure would not grant permission for Mr Puckle to take up employment with B-Sure. It was not clear at that stage as to whether B-Sure was going to hire Mr Puckle.
- [14] B-Sure's request may sound peculiar since these companies are competitors. However, it would seem that there was nothing untoward with B-Sure's request because when Mr Puckle left B-Sure to join a company called 2-Sure, which was subsequently taken over by Forsure, there was an agreement to partially release Mr Puckle from the restraint obligations in favour of B-Sure. He was allowed to take up employment with 2-Sure and the 24 months' covenant period was reduced to 18 months' period subject to him not operating in the dealer space. He only managed to go back to the dealer space after the expiry of 18 months' restraint period.
- [15] On 24 May 2022, a letter was addressed to Mr Puckle, reminding him of, inter alia, the restraint of trade undertakings contained in the restraint agreement and that any intended employment with B-Sure would result in a breach of the restraint agreement. Mr Puckle was also requested to provide Forsure with an undertaking that he would abide by each and every restraint of trade covenant but to no avail.
- [16] It was only on 3 June 2022 that Forsure became aware that Mr Puckle had taken up employment with Ubersure when it received a communication from Mr Puckle's attorneys of record confirming that Mr Puckle took up employment with Ubersure and he offered to provide certain without prejudice undertakings in respect of the restraint covenant.

Legal principles and application

- [17] It is well accepted that the party seeking to enforce a restraint of trade covenant, is required to invoke the restraint covenant and prove a breach thereof; then, the party who seeks to avoid the restraint, bears an onus to demonstrate, on a balance of probabilities, that the restraint of trade covenant is unenforceable because it is unreasonable.[8]

[18] While Mr Puckle concedes that he bound himself to a restraint of trade covenant in favour of Forsure, he nonetheless, contends that he signed under duress because he was going to lose his job had he persisted to refuse to sign the restraint covenant. What is strange is that Mr Puckle was not a novice when it comes to restraint of trade covenants. Moreover, before signing the restraint covenant with Forsure, he was given an opportunity to source employment elsewhere.

[19] I accordingly fail to understand how he could have been coerced to sign the restraint covenant since he was afforded ample time to apply his mind. In any event, I do not have to spend much time on this issue as Mr Puckle seem to have abandoned the duress allegation. In his reply, he contends that he stayed with Forsure because of promises that were made to him but never fulfilled.

[20] I now turn to the enquiry the restraint covenant is reasonable and enforceable, which turns on the following well accepted requirements:[9]

- (a) Does the one party have an interest that deserves protection after termination of the agreement?
- (b) If so, is that interest threatened by the other party?
- (c) In that case, does such interest weigh qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive? and
- (d) Is there an aspect of public policy having nothing to do with the relationship between the parties that requires that the restraint be maintained or rejected?
- (e) Whether the restraint goes further than necessary to protect the relevant interest?

[21] The protectable interest of an applicant in a restraint of trade pertains to confidential information and customer connections. In *Labournet (Pty) Ltd v Jankielsohn and Another*[10] the Court held:

‘... A restraint is only reasonable and enforceable if it serves to protect an interest, which, in terms of the law, requires and deserves

protection. The list of such interests is not closed, but confidential information (or trade secrets) and customer (or trade) connections are recognised as being such interests. ...’

Business connections

[22] Mr Puckle concedes that Forsure’s business largely depends on potential insurance leads obtained from various national and local car dealerships to conclude various short-term insurance agreements through its call centre. The dealerships, motor vehicle sales agents, and financial and intermediary consultants (Dealers) assist clients by referring them to insurance brokerages such as Forsure to obtain insurance and insurance-related products.

[23] To ensure a steady stream of insurance leads, it is not disputed that Forsure has employed a number of Dealer Sales Consultants whose main responsibility is to introduce Forsure to the Dealers with a view to make it a preferred brokerage of these dealerships and refer their clients for insurance and insurance-related products. They give advice on Forsure's services and then build and maintain a relationship with the Dealers through constant contact to ensure that

Forsure remains their preferred brokerage for insurance and insurance-related products.

[24] Forsure contends that the Dealers are not obligated to provide Forsure with insurance leads and may refer their clients to any other brokerage despite the national pact it has with dealerships. As a result, the relationship between Forsure's Dealer Sales Consultants and Dealers is prime for the success of its strategy and business.

[25] Mr Puckle denies that he had forged any business relationship with the Dealers while in the employ of Forsure as he was simply required to cold call the dealers. By the same token, he contends that he developed the relationship with dealers prior to him joining Forsure. While Forsure concedes that Mr Puckle brought his own Dealers from B-Sure, it contends that he was also exposed to Forsure's new Dealers. In *Rawlins N.R and another v Carvantruck (Pty) Ltd*,^[11] dealing with similar circumstances, the following was stated:

'In summary then, what Rawlins says is that during his employment with the respondent he largely dealt, not with its existing customers, but with his own pre-existing following or buyers whom he later found. Does this establish that the respondent did not have a proprietary

interest of the kind under consideration? It is, of course, a factor in his favour; but not conclusively so ...Even though the persons to whom an employee sells and whom he canvasses were previously known to him and in this sense "his customers", he may nevertheless during his employment, and because of it, form an attachment to and acquire an influence over them which he never had before. Where this occurs, what I call the customer goodwill which is created or enhanced, is at least in part an asset of the employer. As such it becomes a trade connection of the employer which is capable of protection by means of a restraint of trade clause.' [Emphasis added]

[26] Forsure baldly asserts in the founding affidavit that since Mr Puckle took up employment with Ubersure, the leads of dealer sales have started to decline. When challenged, it abandoned the alleged decrease in 'leads' and, in the replying affidavit, it provided a schedule that shows a decrease in 'sales' after the departure of Mr Puckle. Absent any evidence of the Dealers and leads that Mr Puckle sourced from Softsure, Badger group software system, subsequent to him having access thereto, the allegation that his sale increased because of the said access is purely speculative. Even so, it makes sense, as explained by Mr Puckle, that the reason for the increase in sales during the latter part of 2020 was due to the Covid-19 pandemic and the various levels of national lockdown that had been imposed.

[27] Regardless, it is common cause that Mr Puckle handed over his Dealers and continued to refer leads to Forsure even after his departure. In my view, nothing much turns on the alleged decline in leads that Mr Puckle used to refer to post his employment with Forsure. Tellingly, there is no evidence that Mr Puckle has influenced any of Forsure customers, particularly the ones he brought over, to follow him to Ubersure.[12]

[28] Other than an ill-defined allegation that Mr Puckle had customer connections with Forsure's new dealers, there is no evidence

that in a period of less than a year Mr Puckle created or nurtured any customer connections worthy of protection. In fact, Forsure seems to rely on only two new insurance companies, being Dot-Sure and Absa, to contend that Mr Puckle would be able to prejudice its business. Clearly, the following observations in *Southgate Electrical Wholesalers CC v Rabilal* and another,[13] equally apply in this instance:

'I am acutely aware that Rabilal was responsible for sales in Southgate's business and the need for the restraint clause was to protect Southgate's interest and prevent industrial espionage by moving Southgate's customers with him to its competitor, Arb. This would cause Southgate to go insolvent in no time. However Southgate loses sight of the fact that Rabilal initially moved over to it from Arb in 2008, Rabilal bringing with him the customers lists of Arb to Southgate. Whatever sympathy I may have for the family business of Southgate, is thrown out of the window, when I consider that the fundamental issue in this matter is the customer lists or at least 80% of them are common to both Southgate and Arb. It should be borne in mind Rabilal disputes that he dealt with approximately 70% of Southgate's 125 customers. He contends that he only dealt with Southgate's general electrical market which accounts for 25% of its overall business and in this regard he only handled 70% of these customers. He denies that he dealt with the OHC customers. For this reason Southgate cannot lay claim to the customer list as an interest worthy of protection and I am not persuaded by Mr Camp that Southgate has discharged the onus of showing that it has an interest that is deserving of protection.' (Emphasis added)

[29] It follows that, given the nature of the *Plascon Evans* rule, the mere ipse dixit of Forsure cannot suffice on its own to establish the proprietary interests that warrant protection.[14] As correctly contented by Mr Puckle, Forsure unreasonably seeks to enforce a restraint merely in order to prevent competition as there are protectable customer connections.

Trade secrets

[30] Turning the issue of trade secrets, in *Mozart Ice Cream Classic Franchises (Pty) Ltd v Davidoff & Another*,[15] the court referred to *Walter McNaughtan (Pty) Ltd v Schwartz & Others*,[16] where the basis of the enquiry was aptly outlined as follows:

'Whether the information constitutes a trade secret is a factual question... For information to be confidential it must (a) be capable of application in trade or industry, that is, it must be useful; not be public knowledge or property; (b) it must be known only to a restricted number of people or a closed circle, and (c) be of economic value to the person seeking to protect it.'

[31] Forsure contends that Mr Puckle had access to Softsure since 27 August 2020, which contains, inter alia, new business, sales, policy administration, accounting and dealer contact management. Also that Mr Puckle was exposed to Forsure sales strategy and generated reports on sales and leads.

[32] Mr Puckle concedes that he had some form of access to this information. However, he is adamant that the software system and quote generating platforms do not constitute trade secrets. To the extent that Forsure seeks to protect the pricing information

which comprises of quotes and referral fees that it paid to dealers, it is not exceedingly secret and that any disclosure thereof would lead to its demise, so it is further contended. To buttress this contention reliance is placed on this Court's decision in *AIG Sales (Pty) Ltd v Hutt and another*, [17] where it is stated that:

'I doubt that the pricing information could still be commercially viable given the lapse of time. As such the threat or risk of such information being used by Ms Hutt has seriously diminished. Confidentiality is not always absolute, nor is the protection always permanently available.[18] In *Pinnacle Technology Shared Management Services (Pty) Limited and another v Venter and another*, [19] where this Court, per Whitcher, J, dealing with the potential prejudice associated with confidential information stated that:

"[57] It seems to me that, where a company has competitors, adjustments to its profit margins and discount packages will be made fairly often. Unlike a 'secret recipe', the exact amount of profit a company sets out to make or gives up by way of discount to attract business on any given deal is not an immutable piece of information. Likewise, knowing this information does not give a competitor a permanent advantage.

[58] If the second respondent were to come to know this information, there is nothing to suggest that it would be able to better the prices the applicants already offer their customers. While it is not ideal that a competitor knows the applicant's exact mark-up, it strikes me that undercutting, itself, is a routine business threat.

[59] It is difficult to calculate the applicants likely prejudice should their historical sales to the other 18 customers the first respondent dealt with be disclosed the second respondent. It seems to me that the value of this information would principally be to alert a competitor when a customer's stock was low or equipment needed replacement. While undoubtedly confidential, this information is unlikely to be a deciding issue in winning customers away.'" (Emphasis added)

[33] By parity of reasoning, in the present instance there is nothing to indicate that Mr Puckle's knowledge of confidential information such as costing, pricing and the like has or will seriously harm Forsure's business.

Weighing up the interest of the parties

[34] Forsure adamantly seeks to enforce the restraint for the whole period of 24 months solely because, as it contends, Mr Puckle successfully managed to regain all his customers after the expiry of the 18 months' restraint period in relation to B-sure. Clearly, Forsure is oblivious to the purpose of a restraint of trade.

[35] Strikingly, there is no iota of evidence to justify the 24 months' restraint period, particularly, the length of time required to allow Mr Puckle's replacement to perform his/her duties and to rebuild and strengthen the business connections that were maintained by Mr Puckle during the short period of his employment with Forsure. Even 18 months would likewise be excessive given the fact that Mr Puckle was not in a managerial role and had a short employment span. Therefore, in my view, this matter is obviously distinguishable from the authorities referred to in the pleadings.

[36] In addition, there is no justifiable reason to enforce a national restraint when balanced against offending the right of Mr Puckle to work in a profession in which he is solely skilled and competent, albeit, same was acquired or enhanced while in the employ of Forsure. In *Aquatan (Pty) Ltd v Janse Van Vuuren and another*, [20] it was stated that:

[21] I accept that the first respondent possesses knowledge of specific customer needs that could be conveyed to his new employer to the prejudice of the applicant. Specifically, he probably knows how a customer or consultant could be influenced by alternative

specifications, higher standards, or alternative products which could ensure the successful award of a tender or project. However, in my view, the nature of this knowledge is not proprietary. To the extent that the first applicant's technical competence and experience in the industry has given him a feel for how to structure a liquid containment solution that best addresses a customer's

needs – this is more a skill he has developed and carries in his head than a discrete piece of knowledge he has purloined from the applicant's cabinet of trade secrets.

[22] It seems obvious that a major concern underlying this application is that the first respondent possesses technical skills and experience which he is able to strategically apply to give whomever employs him a competitive advantage in marketing their services and drafting attractive tender proposals. This ability, however, has a value without reference to any of the applicant's secrets. It is an ability to strategically apply general technical knowledge and experience to the advantage of an employer and, as stated above, does not belong to the applicant. As stated by the Labour Appeal Court in *Labournet (Pty) Ltd v Jankielsohn and Another* [21]:

“Even if an employer spent time and effort and money to

train or “skill” an employee in a particular area of work the employer has no proprietary hold on the employee, or his, or her, knowledge, skills and experience, even if those were acquired at that employer.” (Emphasis added) (Footnotes omitted)

[37] Regard must also be had to the fact that Mr Puckle was less than a year in the employ of Forsure and the confidentiality it seeks

to protect is not absolute or permanently protectable.

[38] As well, there is no evidence to show that Mr Puckle would lure Forsure's employees to joint Ubersure; which is, in any event, unlikely given that contention by Forsure that all its employees are bound by respective restraint of trade agreements.

[39] To my mind, it is Mr Puckle who stands to lose far more than Forsure should the restraint be enforced. He would have to contend with being economically inactive in a constrained economic climate and labour market that is haemorrhaging jobs on the terms that are overtly far-reaching given the diminished threat to the proprietary interest sought to be protected.

Conclusion

[40] In all the circumstances, I am not convinced that Forsure has discharged the onus of showing that the provisions of the restraint of trade covenant are unenforceable.

Costs

[41] In *Ball v Bambalela Bolts (Pty) Ltd & another*[22], the Labour Appeal Court made it clear that, to the extent that the enforcement of a restraint, in principle, involves a constitutional right in terms of section 22 of the Constitution[23], the general rule that costs follow the result does not apply. That is so because costs orders may deter litigants from approaching a court to litigate concerning an alleged violation of their Constitutional rights for fear of being penalised with costs if they are unsuccessful.

[42] In the result, I make the following order.

Order

1. This application is dismissed.
2. There is no order as to costs.

P. Nkutha-Nkontwana

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Advocate A South SC & Advocate P Moll

Instructed by:

Edward Nathan Sonnenbergs Inc

For First and second Respondent: Advocate W Bekker

Instructed by:

Jansen and Jansen Attorneys

[1] See: Mozart Ice Cream Classic Franchises (Pty) Ltd v Davidoff and another (Mozart)

(2009) 30 ILJ 1750 (C) at 1761; Waco Africa (Pty) Ltd t/a Form-Scaff v Sack and Others (Waco)
(2020) 41 ILJ 1771 (LC) at para [18].

[2] See: Ecolab (Pty) Ltd v Thoabala and another

(2017) 38 ILJ 2741 (LC) at para [20]; Vumatel (Pty) Ltd v Majra and others

(2018) 39 ILJ 2771 (LC) at paras [4] - [5].

[3] Unreported judgment under case no: 113/2022 delivered on 19 April 2022 at paras

[30] - [31].

[4] 2010 (6) SA 477 (SCA) at para [20].

[5] See: Rule 7 (4) of the Rules for the conduct of proceedings in the Labour Court which confirms this rule in that it provides that the replying affidavit must address only those issues raised in the answering affidavit and may not introduce new issues of fact or of law. See also: Harmony Gold Mining Co Ltd (Target Mine) v National Union of Mineworkers and others

(2012) 33 ILJ 2609 (LC) at paras [22] - [25].

[6] See: Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984

(3) SA 623 (A) at 634E-635C; National Director of Public Prosecutions v Zuma

[2009] ZASCA 1; 2009 (2) SA 277 (SCA) paras [26] - [27]; Gbenga-Oluwatoye v Reckitt Benckiser SA (Pty) Ltd and Another (2016) 37 ILJ 902 (LAC) at para [16].

[7] See: Reddy v Siemens Telecommunications (Pty) Ltd (Reddy) 2007 (2) SA 486 (SCA) at para [4]; Ball v Bambalela Bolts (Pty) Ltd & another (Ball) (2013) 34 ILJ 2821 (LAC) at para [14].

[8] See: Waco supra fn 1 at para 18; Magna Alloys and Research (SA) (Pty) Ltd v Ellis

[1984] ZASCA 116; 1984 (4) SA 874 (A) at 891B-C; Reddy supra fn 7 at para 14; Labournet (Pty) Ltd v Jankielsohn and Another (Labournet)

(2017) 38 ILJ 1302 (LAC) at para 39; Ball supra fn 7 at para 13; Esquire System Technology (Pty) Ltd t/a Esquire Technologies v Cronjé and another (Esquire)

(2011) 32 ILJ 601 (LC) at para 26; SPP Pumps (SA) (Pty) Ltd v Stoop and Another

(2015) 36 ILJ 1134 (LC) at para 26; Shoprite Checkers (Pty) Ltd v Jordaan and Another

(2013) 34 ILJ 2105 (LC) at para 20.

[9] See: Basson v Chilwan and Others (Chilwan)

[1993] ZASCA 61; 1993 (3) SA 742 (A) at 767G-H; Reddy supra fn 7; Ball supra fn 7; Jonsson Workwear (Pty) Ltd v Williamson and Another

(2014) 35 ILJ 712 (LC) at para [44]; Medtronic (Africa) (Pty) Ltd v Van Wyk (Medtronic)

(2016) 37 ILJ 1165 (LC) at para [15]; Vox Telecommunications (Pty) Ltd v Steyn and Another

(2016) 37 ILJ 1255 (LC) at paras [28] – [29]; Esquire supra fn 8 at paras [50] – [51]; Labournet supra fn 8 at para [41].

[10] Labournet supra fn 8 at para [41].

[11]

[1992] ZASCA 204; 1993 (1) SA 537 (A) at para 542E-H.

[12] Rawlins v Caravantruck (Pty) Ltd

[1992] ZASCA 204; 1993

(1) SA 537 (A) at 541D-I.

[13] 2011 JDR 0719 (KZD) at para 33.

[14] See: Mozart supra fn 1.

[15] Mozart supra fn 1 at 1761.

[16] 2004 (3) SA 381 (C) at 388J-389B.

[17] Unreported judgment under case no: J442/20 delivered on 17 December 2020 at para [27].

[18] See: Handico (Pty) Ltd t/a Hardware Centre v Vallabh and Another (19/06422) [2019] ZAGPJHC 90 (15 March 2019) at para [25].

[19]

[2015] ZALCJHB 199 at paras [57] - [59].

[20]

(2017) 38 ILJ 2730 (LC) at paras [21] - [22].

[21] Labournet supra fn 7 at para [61].

[22] Ball supra fn 7 at paras [27] - [31].

[23] Constitution of the Republic of South Africa, 1996.

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