

SOUTH AFRICA / JUDGMENT

Lowveld Packaging (Proprietary) Ltd v Heine and Others (2025/022233) [2025] ZALCJHB 190 (5 May 2025) [2025] ZALCJHB 190

COURT

Labour Court Johannesburg

BEFORE

Mafa-Chali

CASE / FILE NUMBER

2025/022233

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

No: 2025-022233

In

the matter between:

LOWVELD
PACKAGING (PROPRIETARY) LIMITED
Applicant
and
JUAN
HEINE
First
Respondent
SAMI
VAN ZYL
Second
Respondent
OUROPACK
DISTRIBUTION (PROPRIETARY LIMITED)
Third
Respondent

Heard:

19 March 2025

Delivered:

05 May 2025

JUDGMENT

MAFA-CHALI, AJ

Introduction

- [1] This is an urgent opposed application in terms of which the Applicant seeks, by way of final interdict to interdict and restrain the First Respondent until 31 May 2026, whether as a proprietor, partner, director, shareholder, member, employer, consultant, contractor, financier, agent, representative, assistant or otherwise, from directly or indirectly carrying on or being interested in or engaged in or concerned with or employed by any business, trade, firm, undertaking or concern carried on in the Mpumalanga Province or the Kingdom of Eswatini which sells prescribed goods or renders prescribed services or in the course of the business of which prescribed goods are sold or prescribed services are rendered.
- [2] The Applicant also seeks an order interdicting and restraining the Second Respondent until 30 November 2025 from soliciting customers of the Applicant, directing business from the Applicant to the Third

Respondent and or any other person selling prescribed goods and or rendering prescribed services.

- [3] Further, an order interdicting and restraining the First Respondent and Second Respondent from divulging the Applicant's confidential information, including but not limited to the Applicant's customers, suppliers' costing, new developments, patents, innovations and methods of conducting business to the Third Respondent or any other person.
- [4] Furthermore, directing the First Respondent and Second Respondent to forthwith return the Applicant's confidential information, including but not limited to the Applicant's customers, suppliers' costing, new developments, patents, innovations and methods of conducting business to the Applicant.
- [5] The Applicant also prayed that the First and Second Respondents pay the costs of this application jointly and severally, the one paying the other to be absolved.
- [6] On 12 March 2025, the Applicant filed a notice of withdrawal against the Second Respondent. This application will therefore only be determined against the First Respondent.
- [7] The urgent application was enrolled for hearing in this Court on 19 March 2025 and was opposed by the First Respondent and Second Respondent, who also raising three points in limine for lack of urgency, non-compliance with Rules 38 and 39 of the Labour Court Rules[1] and improper commissioning of Makasi's affidavit on behalf of the Applicant.

- [8] I will have to consider, based on the facts placed before this Court, whether over and above the points in limine raised by the First respondent, I am satisfied that the application is an urgent one to be dealt with as such and whether the application has met the requirements of a final relief to be granted.

Factual background

- [9] The Applicant is a company located in Nelspruit conducting business in the provision of packaging corrugated boxes, packaging of pouches, bags and film thermoformed packaging, custom packaging solutions tailored to the unique requirements of its customers, provision of food spices, range of cleaning materials, packaging of food, beverage industry, manufacturing sector, retail sector, hospitality sector, pharmaceutical and healthcare industry and logistics in Mpumalanga and Kingdom of Eswatini.
- [10] The First Respondent was previously employed by the Applicant as its Sales Representative until his resignation effective 31 May 2024 and is presently employed by the Third Respondent.
- [11] The Second Respondent was also previously employed by the Applicant initially as a Bookkeeper and later as its General Operations Manager, and resigned effective 30 November 2024.
- [12] The Third Respondent is cited as an interested party, and no relief is sought against it.

Rule 47 notice

- [13] On 12 March 2025, the Applicant made an application in terms of Rule 47 of the Labour Court Rules for an order in accordance with paragraph 8 of the First Respondent's answering affidavit to be his consent to the order, made in writing on 05 March 2025, signed by the First Respondent and witnessed by Robin Peter Gerhold. This application was opposed by the First applicant, arguing that the consent he made is not consent to make an order in terms of Rule 47 of the Labour Court Rules.
- [14] I agree that the consent by the First Respondent is the consent in terms of Rule 47 of the Labour Court Rules, as correctly argued by the Applicant, as it meets the requirement stipulated in Rule 47 (2) of the Labour Court Rules.

Jurisdiction

- [15] The Applicant submitted that this Court has jurisdiction to entertain the application as the relief sought arises from the employment

relationship between the First and Second Respondents and is a matter concerning a contract of implement contemplated in section 77 of the Basic Conditions of Employment Act[2] (BCEA); and furthermore, the First Respondent is employed by the Third Respondent, a competitor of the Applicant and is alleged to have breached his contract of employment.

[16] It was further submitted by the Applicant that the Second Respondent is responsible for spiriting away from the Applicant in breach of fiduciary duty owed by her to the Applicant as a consequence of the senior position she holds at the Applicant; whereas the First and Second Respondents are alleged to be in breach of their confidentiality undertakings furnished in terms of their respective contracts of employment with the Applicant.

[17] The provisions of section 77(3) of the BCEA provides the following:

‘The Labour Court has concurrent jurisdiction with the civil Courts to hear and determine any matter concerning a contract of employment,

irrespective of whether any basic condition of employment constitutes a term of that contract.’

[18] In *Rand Water v Stoop and Another*[3], dealing with the contention that the Labour Court’s jurisdiction in terms of section 77(3) is limited in terms of employment expressly provided for therein, the Labour Appeal Court held conclusively that:

‘... the argument that s 77(3) of the BCEA only permits the Labour Court to interpret the terms of an employment contract and enforce it, is neither reasonable nor logical. This is demonstrably clear that when regard is had to s77A(e) of the BCEA which sets out the remedy the Labour Court may grant in respect of a dispute referred to it in respect of a dispute arising out of an employment contract. Secondly, the meaning ascribed to the word “concerning” in the relevant phrase in s 77(3) is acceptable save that attributing “having proximity to” to the word “concerning” cannot be correct. The word “concerning” while conveying a cause and effect does not convey a meaning that some causes and effects are acceptable and others not or that there has to be a direct or indirect link between the contract of employment and the claim.’

[19] In the circumstances, the Court is clothed with the necessary jurisdiction to hear the present matter.

Urgency

[20] The Applicant submitted that matters involving restraints of trade are, by their very nature, urgent. It was submitted that after it came to the attention of senior management of the Applicant concerning the Second Respondent and after having done an investigation, it revealed that the Second Respondent disseminated confidential information to the First Respondent which has seemingly been given to the Third Respondent, the competitor, whom it is alleged is using to the disadvantage of the Applicant to unlawfully compete with the Applicant.

[21] The Applicant further submitted that the First and Second Respondents were discovered acting in concert and engaging with clients of the Applicant. The First Respondent, being in breach of the restraint provisions included in his contract of employment, and the Second’s Respondent’s conduct on the other hand also in breach of the fiduciary duty owed to the Applicant and in

breach of the confidentiality undertakings furnished by her in her contract of employment; the entire process being facilitated by the Second Respondent together with the First Respondent to disseminate confidential information regarding sales contracts, sales figures, sales process and with an effort for customers to move their businesses from the Applicant to the Third Respondent.

[22] It was argued that as the breaches complained of had already caused harm to the Applicant, the Applicant instructed its attorneys to dispatch letters on 15 January 2025 to both the First and Second Respondents, reminding them of their obligations and to desist from breaching those obligations, but neither of them responded.

[23] It was not in dispute that the First Respondent entered into an employment contract with the Applicant on 21 December 2022 as a Sales Representative; and that such employment contract contains provisions (in particular clause 11) with undertakings for the First Respondent not to disclose confidential information and trade secrets to competitors for a period of two years after termination of such employment contracts in Mpumalanga and the Kingdom of Eswatini.

[24] The First Respondent disputed that he conducted any of the prohibited activities to which the restraint relates in terms of the geographical area of the Kingdom of Eswatini, and also denied the breach of the restraint and confidentiality agreement as it exceeds 12 months reasonable to protect proprietary interests both in confidential information and customer connections. The First Respondent however conceded that she was with the Second Respondent in the Kingdom of Eswatini in January 2025, but she did not participate in the formal discussions with the Spar Store Manager, Johan Lues, but rather they discussed a boat Lues wanted him to go look at in Benoni, which he did as he wanted to buy it, and Lues eventually bought that boat.

[25] The First Respondent has no difficulty consenting, in terms of prayer 2 of the Applicant's notice of motion for the period until 31 May 2025, but prays for the dismissal of the application if the Applicant seeks the relief until 31 May 2026.

[26] However, the First Respondent argued that the Applicant has failed to comply with Rules 38 and 39 of the Labour Court Rules in that it delayed in launching the application as the application was filed nearly seven months after

allegedly becoming aware of any purported breach of the restraint of trade in that the Applicant became aware in July 2024 but only enforced it on January 2025; thereby failing to make a case for urgency. The set of affidavits were not files in compliance with the Rules, there was not proper pagination of the notice of motion in terms of Rule 39(7) of the Labour Court Rules and the Rules 39(9),

(10) and (11) were not complied with proper calculation of time periods for the parties to file opposing affidavits and heads of arguments.

- [27] The First Respondent further submitted and argued that the commissioner of oaths, who administered Makasi's affidavit for the Applicant is an employee of Modern Packaging Distribution, a company of which Makasi is also a director, therefore the commissioner of oaths was conflicted and in contravention of the Justice of the Peace and Commissioners of Oaths Act[4] (Oaths Act), in that a commissioner of oaths who attests to the affidavit is required to be impartial, unbiased and entirely independent of the office where an affidavit is drawn up or signed.
- [28] The First Respondent further argued that the application was received on 18 February 2025, 3 weeks after the Applicant allegedly instructed its counsel to draft the application. No factual foundation was laid for urgency.

Applicable legal principles

- [29] Rule 38 of the Labour Court Rules provides for urgent applications. An applicant that approaches the Court on an urgent basis essentially seeks an indulgence and to be afforded preference, in order to prevent the prejudice and harm that may materialise or persist if the conduct complained of continues. Central to a determination of whether a matter is urgent is whether the applicant has, in the founding affidavit, set forth explicitly the circumstances which render the matter urgent and the reason why substantial relief cannot be attained at a hearing in due course. Thus, it is required of an applicant to set out adequately in his or her founding affidavit the reasons for urgency and to give cogent reasons why urgent relief is necessary.
- [30] Restraint of trade clauses in employment contracts are essential for protecting an employer's proprietary interests. These clauses restrict former employees from engaging in activities that directly compete with the employer for a specified period of time and within a defined geographical area after the termination of their employment. The proprietary interests typically protected by a restraint of trade include the employer's trade secrets, trade connections, and confidential information.
- [31] In *Boomerang Trade CC t/a Border Sheet Metals v Groenewald and another*[5], the Court emphasised the principle that 'proceedings for the enforcement of a restraint of trades are by their very nature, urgent. They invariably seek to interdict

ongoing unlawful action in respect of which an applicant continues to suffer financial losses'.

- [32] Notwithstanding the trite urgency of restraint of trade applications, our courts have established that employers are still required to meet the legal requirements for urgent relief. Our law acknowledges the urgent nature of restraint of trade applications, employers remain obligated to justify the urgency of their application and bring such application in a timeous manner.

[33] In *Flowcentric Mining Technology (Pty) Ltd v Smit and Others*[6], the court outlined several key factors that should be considered when assessing urgency in restraint applications, as set out below:

18.1 The applicant must show that it will not otherwise be afforded substantial redress at a hearing in due course.

18.2 “Urgency of commercial interests may justify the invocation of Uniform Rule of Court 6(12) no less than any other interests”.

18.3 An applicant cannot rely on urgency that was self-created through its earlier inaction.

18.4 When an applicant first seeks compliance from the respondent prior to lodging the application, it cannot be said that the applicant had delayed bringing the application or that the urgency was self-created.

18.5 An application based on a breach of restraint of trade is inherently urgent.’

[34] In *Radebe v The Aurum Institute* [7], the court held that the employer must, within their founding affidavit, establish the background circumstances which make the

matter urgent and the reasons why substantial relief cannot be sought through the normal court processes.[8] In light of the aforesaid precedent, an employer cannot merely assert that the matter is urgent. It is imperative for an employer to establish that, if the matter is not addressed expeditiously, their business will be adversely affected by the employee’s

interference with trade connections or the disclosure of the employer’s confidential information. The court will also consider whether the urgency of the matter was self-created.[9] Employers must act timeously upon becoming aware of an employee’s breach of the restraint of trade clause, as any delay may lead the court to conclude that the urgency was manufactured.

[35] In *Jiba v Minister: Department of Justice & Constitutional Development and Others*[10], the court applied the then-Rule 8 of the Labour Court Rules as follows:

‘Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self-created when seeking a deviation from the rules.’

[36] It was succinctly described by the court in *Maqubela v SA Graduates Development Association and Others*[11] that:

‘Whether a matter is urgent involves two considerations. The first is whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. In all instances where urgency is alleged, the applicant must satisfy the court that indeed the application is urgent. Thus, it is required of the applicant adequately to set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary...’

[37] The factors the Applicant must show are set out in *Mojaki v Ngaka Modiri Molema District Municipality and Others*[12], in which the court referred with approval to the following dictum from *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*[13]:

‘... 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.’

[38] Given the context of this matter, the Applicant communicated with the First Respondent, reminding him of the obligations and to desist from breaching those obligations rather than rushing to court as a first option, but no response was received.[14] It cannot, therefore, be said that under the circumstances of this matter that the urgency is self-created.

[39] Before burdening myself with the merits of the application itself, I must, however, deal with the two other points in limine raised by the First Respondent on non-compliance with Rules 38 and 39 and the commissioning of the Applicant’s founding affidavit.

[40] The First Respondent submitted that the Applicant has not complied with Rules 38 and 39 of the Labour Court Rules, in that it has not made provision in its notice of motion for the exchange of four sets of affidavits in terms of Rule 39(2), has not described the time periods that the parties were to adhere to for the filing of the affidavits in terms of Rule 39(3) but rather filed a short form of the notice of motion, has not paginated its notice of motion nor its founding affidavit before launching the application in terms of Rule 39(7) and lastly, has not calculated the date of the enrolment properly in relation to the time periods that the parties should have been afforded to file their affidavits in the application nor the period for the parties to file heads of arguments in term of Rules 39(9), (10) and (11).

[41] On that basis, the First Respondent prayed that the application be dismissed on the basis of non-compliance alone with costs.

[42] Rule 38 is the general filing of urgent applications procedure, whereas Rule 39 is for applications in restraint of trade. The interpretation of Rule 39 (1) is that the procedure outlined in the Rule 39(1) to Rule 39(11) is applicable only in instances the restraint of trade

application is not brought on an urgent basis, then the Applicant can only enrol the application only once the procedure outlined has been strictly adhered to by the Applicant. That procedure is the exchange of four set of affidavits, seven days to file answering affidavit, five days for the Applicant to file its replying affidavit and five days for the respondent to file the fourth affidavit, indexing and pagination, simultaneous service of heads of arguments within five days from the date of delivery of the index or upon the expiry of dies or filing thereof and lastly, the final enrolment of the matter. If it is an urgent application, it will follow the Rule 38 urgent applications procedure. Due to the non-compliance of the Applicant to file the replying affidavit, it has consequently waived its rights to do so. This does not, however, render the application itself defective, and the application cannot be dismissed.

- [43] As I have already made a finding above that this application has met the requirements to be entertained on an urgent basis, there is therefore no need for this application to be in compliance with Rule 39. The application cannot stand to be dismissed on this ground.

Commissioning of the affidavit

- [44] It was furthermore submitted by the First Respondent that the Commissioner of Oaths, Lazarus Chakadzingwa, who administered the affidavit of Reginald Makasi on behalf of the Applicant, is ostensibly an employee of Modern Packaging Distribution in Tswane, Pretoria West, a company of which Makasi is also a director. Therefore, Chakadzingwa is conflicted, and the commissioning of the oath is in contravention of the Oaths Act, in that a commissioner of oaths who attests an affidavit is required to be impartial, unbiased, and entirely independent of the office where the affidavit was drawn up or signed.
- [45] The affidavit of Reginald Makasi shows that he is the Director of the Applicant, which is Lowveld Packaging (Proprietary) Limited, based in Nelspruit, whereas Lazarus Chakadzingwa indicated that he is the CA(SA) of Modern Packaging Distribution, Tshwane, Pretoria West. The First Respondent has not been able to successfully show the conflict of interest of the commissioner of oaths, but merely alleged that Makasi is ostensibly the employee of Modern Packaging Distribution without any substantiation to the allegations. Ostensibly means it appears, though not necessarily so or apparently. This is not factual and therefore cannot stand the certainty test of such facts.
- [46] Therefore, the rule of impartiality, unbiasedness, and independence of the commissioner of oaths will not apply under the circumstances. Such submissions are therefore dismissed as they have not been proven by the First

Respondent in any manner.

Analysis

- [47] It is trite that restraint of trade agreements is valid and enforceable in South Africa and that such agreements should be honoured in their terms, unless such restraint of trade provisions unreasonably restrict a person's right to trade or work or are in conflict with public policy.
- [48] A party that challenges the enforceability of a restraint of trade agreement bears the burden of alleging and proving that the restraint of trade provision is unreasonable or unconstitutional. Restraint of trade agreements are enforced, having regard to the constitutional dispensation, but the mere fact that section 22 of the Constitution of the Republic of South Africa, 1996, confers a right to work does not prevent restraint of trade agreements from being enforced. The right to work must be balanced with the right to enter into a contract which contains a restraint of trade provision, on a free and voluntary basis.
- [49] The reasonableness or otherwise of a restraint of trade has been considered in many cases, and it was held that reasonableness should be determined with reference to the following four considerations:
1. Is there an interest deserving of protection at the determination of the agreement?
 2. Is that interest being prejudiced?
 3. If so, how does that interest weigh up qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive?
 4. Is there any other facet of public policy not having anything to do with the relationship between the contracting parties which requires that the restraint should either be enforced or disallowed?
- [50] The protectable interest of the Applicant in this matter consists of its client base, list of clients, and other confidential information and trade secrets confidential information including but not limited to the Applicant's customers, suppliers' costing, new developments, patents, innovations and methods of conducting the business of the Applicant. Clearly, the First Respondent had access to the Applicant's full database, including the confidential information and trade secrets such as its client lists and tariffs, which he can potentially use for the best interests of his new employer, the Third Respondent.
- [51] It not in dispute that the Applicant does have protectable interests in the form of customer connections and confidential information, and the First Respondent have not proven the unreasonableness of the restraint and its period, and in fact, it has been established by his concession that he has acquired a significant personal knowledge of, or influence over, the Applicants' customers, and confidential information. It is evident that the First Respondent had very close personal relationships with clients or customers of the Applicant in his capacity as Sales Representative, and he is therefore in a position to persuade and solicit

such clients to follow him to the only competitor, the Third Respondent.

[52] The restraint provisions are unequivocal and contain explicit protection of confidentiality and intellectual property rights. The First Respondent is bound by these provisions and not entitled to unlawfully utilize the Applicant's confidential information and trade secrets. The Applicant does not seek to deny the First Respondent the opportunity to work at the Third Respondent but seeks to prevent the unlawful soliciting of the Applicant's clients and the unlawful use of its confidential information.

[53] I find that the restraint of trade contract agreement in this matter is valid and enforceable, except that it was challenged by the First Respondent in respect of its duration, being the period of two years after the termination of contract of employment. In fact, the First Respondent has conceded to prayer 2 of the Applicant's notice of motion and has no difficulty consenting to the Applicant's notice of motion for the period

until 31 May 2025. It is, however, my considered view that the First Respondent has not successfully discharged his onus to prove that the restraint of undertaking for a period of two years is unreasonable and against public policy.

[54] The court in *Emlink (Pty) Ltd and Others v Matthee and Others*[15], referred with approval to the dictum appearing in *Experian SA (Pty) Ltd v Haynes and Another*[16] and *Sibex Engineering Services (Pty) Ltd v Van Wyk and Another*[17] and held that there are two kinds of proprietary interests that can be protected by a restraint of trade undertaking:

'The first is 'the relationship with customers, potential customers, suppliers and others that go to make up what is compendiously referred to as the "trade connections" of the business, being an important aspect of its incorporeal property known as goodwill'. And the second is 'all confidential matter which is useful for the carrying on of the business and which could therefore be used by a competitor, if disclosed to him, to gain a competitive advantage.'

[55] I find that the First Respondent has not proven the unreasonableness of the restraint, has not established that he has never acquired any significant personal knowledge of, or influence over, the Applicants' customers, nor that he had no access to confidential information. By all accounts, the First Respondent, through his position as a salesperson since 1 December 2022, developed relationships with a number of the Applicant's customers. A business's

customer connections are a proprietary interest that can be protected by a restraint of trade undertaking.

[56] An employee has the knowledge of the identity and requirements of the Applicant's customers and has had regular and repeated contact with the customers, and so has built up a connection in the course of trade with them.

[57] For all of these reasons, it can be concluded that there can be no doubt that customer contacts exist and the First Respondent could exploit these connections as he is now employed by a competitor, and these customer connections form a part of the Applicant's goodwill. It is therefore this interest that the Applicant is entitled to protect by enforcing the restraint of trade. On that basis, the restraint should be enforced.

[58] I find that the Applicant has made out a case for the interdictory relief sought in this application, the requirements for a final interdict are met, there is a clear right, an injury is reasonably apprehended, and there is no other remedy available to the Applicant. The application is urgent, and thus an interdict is granted.

Costs

[59] The Applicant sought a cost order against the First Respondent, and the First Respondent prayed for the application to be dismissed with costs.

[60] It is trite that a rule of practice that costs follow the result does not apply in labour matters, but the Court has a wide discretion in respect of costs in consideration of the requirements of law and fairness. In my view, this is a case where the interest of justice will be best served by making no order as to costs. The Court will, therefore, make no order as to costs.

[61] In the premises, I make the following order:

Order

1. The First Respondent is interdicted and restrained until 31 May 2026, whether as a proprietor, partner, director, shareholder, member, employer, consultant, contractor, financier, agent, representative, assistant or otherwise, from directly or indirectly carrying on or being interested in or engaged in or concerned with or employed by any business, trade, firm, undertaking or concern carried on in the Mpumalanga Province or the Kingdom of Eswatini which sells prescribed goods or renders prescribed services or in the course of the business of which prescribed goods are sold or prescribed services are rendered.
2. The First Respondent is interdicted and restrained until 31 May 2026 from soliciting customers of the Applicant, directing business from the Applicant to the Third Respondent and or any other person selling prescribed goods and or rendering prescribed services.
3. The First Respondent is interdicted and restrained until 31 May 2026 from divulging the Applicant's confidential information, including but not limited to the Applicant's customers, suppliers' costing, new developments, patents, innovations and methods of conducting business to the Third Respondent or any other person.
4. There is no order as to costs.

G. Mafa-Chali

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate Darryl Williams Instructed by: Malherbe Rigg & Ranwell Inc For the First and Second Respondents: Advocate C J Bekker Instructed by: Pottas Attorneys

[1] GN 4775 of May 2024: Rules Regulating the Conduct of the Proceedings of the Labour Court.

[2] Act 75 of 1997 as amended.

[3]

(2013) 34 ILJ 576 (LAC).

[4] Act 16 of 1963.

[5]

[2012] JOL 29426 (ECG) at para 36.

[6] 2023 JDR 2577 (GP)

[7]

(2024) 45 ILJ 876 (LC).

[8] Ibid at paras 12 and 19.

[9] Ibid at para 20.

[10] (2010) 31 ILJ 112 (LC) at para 18.

[11]

(2014) 35 ILJ 2479 (LC) at para 32.

[12] (2015) 36 ILJ 1331 (LC) at para 17.

[13] (11/33767) [2011] ZAGPJHC 196 (23 September 2011) at para 6.

[14] See: Continuous Oxygen Supplies (Pty) Ltd t/a Vital Aire and Another (J2013/11)

(2011) ZA LCJHB 150

[15] (2023-103550) [2023] ZAGPJHC 1276 (1 November 2023) at para 16.

[16] (2013) 34 ILJ 529 (GSJ).

[17] 1991 (2) SA 482 (T).

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