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

10 July 2026

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no. **2026 – 084033**

In the matter between:

GNG PINE PRODUCTS CC	**First Applicant**
GNG MARKETING AND DISTRIBUTION CC	**Second Applicant**
and	
FREDERIK PIETER JEREMIA DE BEER	**First Respondent**
DB CASKETS AND DOMES (PTY) LTD	**Second Respondent**

Heard: **18 June 2026**

This judgment was handed down electronically by circulation to the parties and legal representatives by email and by uploading onto CaseLines. The date and time for hand-down is deemed to be 10 July 2026

<u>Summary:</u> **Restraint of trade – urgency – principles considered – applicant satisfying requirements of urgency under Rule 38 – provisions of Rule 39 considered – Rule 39 prescribes process to be followed to enforce restraints of trade – applicant complying with such processes – application to be heard as one of urgency**

Restraint of trade – principles stated – application of principles to matter – issue of protectable interest and infringement of such interest considered – protectable interest in the form of trade connections and confidential information considered – protectable interest shown in both respects

Restraint of trade – breach of restraint – employee actually involved in establishing of competitor – employee associated with competitor and using confidential information and trade connections to establish competing business – employer entitled to mitigate risk caused by such breach – confidential information and trade connections held by employee unreasonable risk if associated with competitor – infringement of protectable interest shown

Restraint of trade – conducting of weigh off – factors considered – restraint area not commensurate to employee's sphere of influence – restraint area reduced –restraint period – period unreasonably long – period reduced – overall considered and subject to moderation weigh off favouring employer

Interdict – requirements of interdict satisfied – interdict granted – restraint enforced

Costs – principles considered – costs awarded

JUDGMENT

SNYMAN, AJ

Introduction

[1] In The current matter, the applicants have instituted application in this Court, on an urgent basis, to enforce a restraint of trade covenant against the first respondent, who is a former employee of the applicants. The applicants seek an interdict against the first respondent, to restrain him from being associated with or interested in the business of the second respondent. The applicants also seek further relief in the form of interdicting the first respondent from

soliciting the custom of the applicants' customers, and from disclosing the applicants' confidential information.

[2] The application was first brought on 14 April 2026, and set down for 19 May 2026 pursuant to the time limits as prescribed by Rule 39 of the Rules of this Court. On 19 May 2026, the application came before Court as unopposed, however the first respondent appeared and indicated that he wanted to oppose the matter. The matter was postponed *sine die*. The first respondent then filed an answering affidavit on 25 May 2026. The second respondent gave notice of its intention to abide by any outcome, and did not oppose the matter.

[3] The matter was then set down to be heard on 28 May 2026. However, the day before the hearing (on 27 May 2026) the first respondent filed a supplementary answering affidavit challenging the validity of the restraint agreement on the basis that it was not signed by the employer. This resulted in the matter again on 28 May 2026 having to be postponed, to a date to be arranged with the Judge President, with costs reserved. The replying affidavit by the applicants followed on 3 June 2026, and the first respondent's fourth affidavit on 9 June 2026. The application, now in all respects complete, was then set down for hearing on 18 June 2026, which is how it came before me.

[4] Two preliminary issues must be dealt with first. Firstly, the first respondent's answering affidavit was filed outside the time limit prescribed by Rule 39(3)(a).[1] It was supposed to have been filed by 23 April 2026 but was only filed on 25 May 2026. As a result, the first respondent has asked for condonation in his heads of argument. There was no objection to the late filing of the answering affidavit emanating from the applicants. Considering the nature of restraint of trade proceedings, I would not be inclined to decide this matter without considering the version and defence of the first respondent, which is established by the answering affidavit. It was also apparent that the applicants had a proper opportunity to file a replying affidavit. Whilst I have concerns about the delay of about a month in filing the answering affidavit, and the explanation for this delay being rather thin, I believe it to be in the

[1] The time limit is seven days.

interests of justice that the late filing be condoned. Insofar as it is necessary, I therefore grant condonation for the late filing of the answering affidavit, and I will have regard to it in deciding this case.

[5] Secondly, the first respondent raises an issue regarding the *locus standi* of the first applicant in these proceedings. The point is based upon the fact that the business of the first applicant was sold to the second applicant as a going concern in 2013, and the employment of the first respondent then transferred to the second applicant, by virtue of section 197 of the Labour Relations Act(LRA).[2] In terms of section 197(2)(a): '*If a transfer of a business takes place, unless otherwise agreed in terms of subsection (6) - (a) the new employer is automatically substituted in the place of the old employer in respect of all contracts of employment in existence immediately before the date of transfer …*'. As a result, and according to the first respondent, the entire dispute lies between him and the second applicant as his employer, and the first applicant should not be involved in the matter at all. The applicants answer this by saying that the first and second applicants constitute components of the same group of companies (GNG Group). Whilst that may be so, it is clear that for all intents and purposes, the employment relationship and the terms of the employment contract, which forms the basis of the current application, exists only between the second applicant and the first respondent. This would therefore include the restraint agreement relied on by the applicants. The first applicant, even if part of the same group, is not the employer of the first respondent and as such would not be entitled to any relief under the restraint of trade. The *locus standi* point raised by the first respondent is thus well made. No relief in this case will therefore be afforded in favour of the first applicant.

[6] After hearing both parties on 18 June 2026 and considering the heads of argument filed, I decided to reserve judgment. I now hand down judgment in this matter.

[7] For ease of reference in this judgment, I will refer to the first applicant as '*GNG Pine*' and the second applicant as '*GNG Marketing'*. Where I refer to both

[2] Act 66 of 1995 (as amended).

these applicants jointly, I will continue to refer to '*the applicants*'. The first respondent will be referred to as '*De Beer*' and the second respondent as '*DB Caskets*'.

Urgency

[8] De Beer disputed that urgency has been established by the applicants in this case. He contends that the first the applicants became aware of the breach of the restraint was on 11 February 2026, and the applicants should then have approached this Court immediately. However, and according to De Beer, the applicants waited two weeks to send a letter of demand on 27 February 2026. After this letter of demand, the applicants did nothing for four weeks, when the letter of demand by the applicants' newly appointed attorneys was sent on 27 March 2026. After that second letter of demand, it still took three weeks to bring the application. According to De Beer, these delays are unexplained, and constitutes undue procrastination destructive of urgency. Added to these complaints concerning the delay, De Beer founds a substantial part of his challenging of urgency upon a contention that the applicants have not provided evidence of immanent harm and breach of the restraint.

[9] When considering De Beer's complaints, I must say that there is merit in some of them. It can be said that there was some procrastination on the part of the applicants in this matter. It can perhaps also be said that the application should have brought earlier, and in particular, shortly after De Beer departed employment on 27 February 2026. However, and for the reasons to follow, I do not believe the applicants should be non-suited based on urgency because of the delays occasioned in this case.

[10] Firstly, I accept that as a general proposition, it was appropriate for the applicants to delay the institution of any legal proceedings until De Beer's employment with it finally ended on 27 February 2026. After all, it is the act of commencement of a competing business by De Beer that would constitute the catalyst for the applicants to bring the application, and that can really only happen once De Beer has departed employment. His earlier statements that he wanted to '*do his own thing*' are just statements, but giving effect to these

statements would only manifest after termination of employment. Therefore, I do not believe the contention by De Beer that the application should have been brought shortly after 11 February 2026 is justified. At worst for the applicants, the appropriate date as first catalyst for the urgent application would be as from the departure of De Beer from employment on 27 February 2026.

[11] Nonetheless, the applicants did act proactively by way of a letter of demand on 27 February 2026. In my view, this letter was intended, based on the earlier dealings between the applicant and De Beer concerning his future intentions, and leading up to his final retirement, to warn De Beer against breaches of his restraint, and then asking him to undertake not to breach the same. In other words, it was a forewarning. It is not a demand to cease already initiated action or conduct. The applicants cannot really be criticised for waiting to see what then happened, in the face of this warning, once De Beer had departed. He may well have decided to only refurbish furniture, which he also earlier said was his intention, in which even no application would be necessary.

[12] It was in the course of March 2026 that the applicants established that De Beer was indeed actively involved with DB Caskets. Whilst it is true that they could have acted with more expedition at this point, it was explained that they were let down by their former representatives, despite the applicants requesting them to take immediate action. The mandate of these representatives was terminated on 24 March 2026 and the applicants' current attorney of record was appointed on 25 March 2026. A formal letter of demand was then sent on 27 March 2026, demanding that De Beer cease his violation of the restraint of trade and provide undertakings in this respect. I may add that a further material breach of the restraint was only discovered on 1 April 2026.

[13] It is true that De Beer did not provide the undertakings sought in the letter of demand of 27 March 2026. However, he did appoint his own attorneys, and these attorneys wrote the applicants' attorneys on 7 April 2026, disputing a breach of the restraint, but also asking for copies of the employment contract and restraint agreement concluded by De Beer. The applicants' attorneys answered the same day, providing the agreements, and suggesting to De

Beer's attorneys that the parties should rather try and amicably resolve this matter before the applicants rush off to Court. De Beer's attorneys were given until 8 April 2026 to indicate their views in this regard.

[14] When no response was forthcoming from De Beer's attorneys, the current application was brought less than a week later, on 14 April 2026.

[15] Considering the aforesaid factual matrix, and despite the complaint by De Beer of a lack of urgency, I am satisfied that overall considered, the applicants met all the requirements of urgency in this matter.[3] The delays have been properly explained, and are understandable. The application was brought more or less at the first reasonable opportunity. There was not undue procrastination on the part of the applicants.

[16] In any event, the applicants' conduct in first trying to resolve this matter by way of seeking undertakings from De Beer is appropriate, as it is advisable that parties first try and find an alternative way to secure compliance with the restraint, before resorting to litigation.[4] The applicants resorted to instituting legal proceedings within a week after the last communication with De Beer's attorneys to try and resolve this matter by way of undertakings bore no fruit. Also, and considering the nature of the relief sought, and the purpose sought to be achieved by the enforcement of a restraint of trade, there is no other form of substantial redress in due course, other than by way of this application.[5] Restraints of trade also carry with them an inherent quality of urgency.[6]

[17] Yes, the applicants could have acted with more expedition in March 2026. But this does not detract from the fact that this was never a case where the

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[3] For the requirements of urgency see *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another* (2016) 37 ILJ 2840 (LC) at paras 20 – 26, and in particular where it comes to restraint of trade applications *Vumatel (Pty) Ltd v Majra and Others* (2018) 39 ILJ 2771 (LC) at paras 4 – 5; *Ecolab (Pty) Ltd v Thoabala and Another* (2017) 38 ILJ 2741 (LC) at para 20.

[4] In *Continuous Oxygen Suppliers (Pty) Ltd t/a Vital Aire v Meintjes and Another* (2012) 33 ILJ 629 (LC) at para 21 it was said that: *'… In my view, litigants should be encouraged in any attempt to avoid litigation, rather than rushing to court as a first option. Litigation is costly and often unnecessary. …'*.

[5] See *Maqubela v SA Graduates Development Association and Others* (2014) 35 ILJ 2479 (LC) at para 32; *Transport and Allied Workers Union of SA v Algoa Bus Co (Pty) Ltd and Others* (2015) 36 *ILJ* 2148 (LC) at para 11.

[6] See *Mozart Ice Cream Classic Franchises (Pty) Ltd v Davidoff and Another* (2009) 30 ILJ 1750 (C) at 1761; *Dot Activ (Pty) Ltd v Daubinet and Another* (2023) 44 ILJ 785 (LC) at para 5; *Plumblink SA (Pty) Ltd v Legodi and Another* (2020) 41 ILJ 1743 (LC) at para 3.

applicants simply let the matter lie. They proactively sought to convince De Beer, immediately before his employment ended, not to breach the restraint and to provide an undertaking to confirm this. That being done, the applicants expected the matter to then be handled with the necessary expedition by their erstwhile representatives but were let down. Although it is true that the applicants chose their representatives and must live with their conduct (failures), it is nonetheless a factor that should be considered. However, and when new attorneys were appointed on 25 March 2026, a formal letter of demand and the application itself followed in less than three weeks. The application itself followed in less than a week after seeking undertakings came to naught. I am therefore satisfied that this application should be dealt with as one of urgency in terms of Rule 38.

[18] Rule 39 should also be considered. The Rule recognises the inherent urgency of restraint of trade applications. It stipulates specific time periods as to how the application is prosecuted, once brought, which process ensures that there is a proper ventilation of all issues when the application is finally heard, making final relief in principle competent. It is prescribed in Rule 39(1) that when an application to enforce a restraint of trade is brought, the process stipulated in Rule 39 must be followed (barring exceptional circumstances). All the requirements of Rule 39 have been satisfied in this case, which in itself lends support to this matter now being decided as one of urgency. Therefore, reading Rule 39 together with Rule 38, I am equally convinced that this matter should be decided as one of urgency.

[19] I will finally deal with De Beer's point about no proper evidence of prejudice or breach of the restraint being present by the applicants. These are not proper points to raise in the context of urgency. The fact is that the applicants allege breach of the restraint and prejudice. Whether this exists or not is an issue that squarely goes to deciding the merits of the case. If the evidence shows that the applicants are unable to substantiate the alleged breach of the restraint and that they have suffered prejudice as a result of the conduct of De Beer, then application must fail on the merits. To consider this under the auspices of deciding urgency is not appropriate.

[20] The matter thus being urgent, and because the applicants seek final relief, they must satisfy three essential requisites to succeed, being (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the absence of any other satisfactory remedy.[7] I will commence deciding whether the applicants met these requirements by first setting out the relevant facts.

<u>The relevant facts</u>

[21] Most of the important facts necessary to decide this application were either undisputed or admitted.[8] Insofar as factual disputes legitimately emerge from a consideration of De Beer's answering affidavit, I will determine these in line with the principles established in *Plascon Evans Paints v Van Riebeeck Paints*[9]. The Court in *Ball v Bambalela Bolts (Pty) Ltd and Another*[10] succinctly summarized the nature of the factual enquiry to be made as follows:

> '… In *Reddy v Siemens Telecommunications (Pty) Ltd*, it was held that the reasonableness of a restraint could be determined without becoming embroiled in the issue of onus. This could be done if the facts regarding reasonableness have been adequately explored in the evidence and if any disputes of fact are resolved in favour of the party sought to be restrained. If the facts, assessed as aforementioned, disclose that the restraint is reasonable then the party, seeking the restraint order, must succeed, but if those facts show that the restraint is unreasonable, then the party, sought to be restrained, must succeed. Resolving the disputes of fact in favour of the

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[7] *Setlogelo v Setlogelo* 1914 AD 221 at 227; *V & A Waterfront Properties (Pty) Ltd and Another v Helicopter & Marine Services (Pty) Ltd and Others* 2006 (1) SA 252 (SCA) para 20. In particular, and where it comes to restraint applications, see *Esquire System Technology (Pty) Ltd t/a Esquire Technologies v Cronjé and Another* (2011) 32 ILJ 601 (LC) at para 38 – 40; *Continuous Oxygen* (*supra*) at para 26; *Experian SA (Pty) Ltd v Haynes and Another* (2013) 34 ILJ 529 (GSJ) at para 59; *Jonsson Workwear (Pty) Ltd v Williamson and Another* (2014) 35 ILJ 712 (LC) at para 54; *FMW Admin Services CC v Stander and Others* (2015) 36 ILJ 1051 (LC) at para 1.

[8] Admitted facts include facts that, though not formally admitted, simply cannot be denied – see *Gbenga-Oluwatoye v Reckitt Benckiser SA (Pty) Ltd and Another* (2016) 37 ILJ 902 (LAC) at para 16.

[9] 1984 (3) SA 623 (A) at 634E-635C. These principles are, in sum, that the facts as stated by the respondent party together with the admitted or facts that are not denied in the applicant party's founding affidavit constitute the factual basis for making a determination, unless the dispute of fact is not real or genuine or the denials in the respondent's version are bald or not creditworthy, or the respondent's version raises such obviously fictitious disputes of fact, or is palpably implausible, or far-fetched or so clearly untenable, that the court is justified in rejecting that version on the basis that it obviously stands to be rejected.

[10] (2013) 34 ILJ 2821 (LAC) at para 14.

> party sought to be restrained involves an application of the *Plascon-Evans* rule ….'

The summary of the factual matrix set out below is arrived at on the basis of the application of the above principles.

[22] The applicants are engaged in the manufacturing and sales of coffins, caskets and domes within the funeral industry, and are part of what is called the GNG Group. According to the applicants, the GNG Gorup is a market leading producer and retailer (seller) of high-quality coffins, caskets and domes. Pine products are the Group's speciality, but the Group also produces a range of high-quality coffins and caskets from chipboard and MDF foil. This is clearly a specialised industry, with limited availability of customers. It is also common cause that the industry is highly competitive.

[23] De Beer was employed by GNG Pine as a Depot / Sales Manager at its Polokwane Depot (branch) on 10 October 2008, in terms of a written contract of employment (the employment contract). His role was defined in a job description accompanying the employment contract, and this included the maintenance of all customer and financial information at the branch, stock management and control, weekly reporting to head office, invoicing, bank reconciliation, and generally what was called '*customer ownership*'. It was indicated that he was employed to '*build up a customer base for the company*'. For all intents and purposes, De Beer was fully responsible for the management and operation of the Polokwane deport in all respects.

[24] Simultaneously with concluding the employment contract, De Beer also concluded what was called a '*Employee Non-Compete Agreement'* with GNG Pine (the restraint agreement). The restraint agreement would continue to apply after the termination of the employment of De Beer, for a period of two years and in the Republic of South Africa. In clause 1 of the restraint agreement, it was recorded:

> 'For good consideration and as an inducement for Company to employ Employee, if such employment is terminated for any cause, employee shall not, for a period of 2 years after leaving the employment, engage directly or

indirectly, either personally or as an employee, associate partner, partner, manager agent, or otherwise, or by means of any corporate or other device, in the manufacturing and or selling of Coffins, Caskets and Domes within the Republic of South Africa nor shall employee for such period and in such localities solicit orders, directly or indirectly, from any customers of Company, or from any customers of its successor, for such products as are sold by Company or its successor, either for (himself or herself) or as an employee of any person, firm, or corporation]'. (sic)

[25] Clause 2 of the restraint agreement defines the term non-compete as meaning that: *'… the Employee shall not own, manage, operate, consult or to be employed in a business substantially similar to, or competitive with, the present business of the Company or such business activity in which the Company may substantially engage during the term of employment…*'. 'Competition' is also defined in the same clause as meaning: '*… owning or working for a business of the following type: Manufacturing and Distribution or Selling of Coffins Caskets and Domes*'.

[26] The restraint agreement also contains a confidentiality undertaking in clause 3, in terms of which De Beer undertook to keep all confidential information of GNG Pine confidential and not disclose it for his own benefit or for the benefit of any third party. This confidential information would include information relating to suppliers, logistics, as well as customer and financial information. In a second numbered clause 3, the restraint agreement further provides for a prohibition on the solicitation of any of the customers of GNG Pine.

[27] On 26 September 2013, a sale agreement was concluded between GNG Pine and GNG Marketing, in terms of which the Cape Town and Polokwane Depots of GNG Pine was sold as going concern to GNG Marketing. The effective date of the sale was 31 August 2013. The sale included all goodwill and assets. The business's goodwill, which was transferred to GNG Marketing, included the restraint agreement of De Beer.

[28] It was common cause between the parties that the employment of De Beer transferred from GNG Pine to GNG Marketing, pursuant to this sale, by virtue of section 197 of the LRA. It was also common cause that his employment contract and the restraint agreement transferred. The transfer was effective 31

August 2013. On 25 September 2013, De Beer was issued with a letter informing him of his transfer of employment to GNG Marketing. De Beer simply continued to operate and manage the Polokwane Depot, as before, after this transaction.

[29] It appears that when De Beer started at the Polokwane Deport, it had only six customers. By 2025, it has some 460 active customers.

[30] In terms of clause 2.3 of the employment contract, the prescribed retirement age for De Beer was 65 years' of age. That meant that he was due to retire at the end of February 2026. During November 2025, GNG Marketing provided De Beer with a retirement notice, indicating that his retirement would be effected at the end of February 2026, with his last day of employment being 27 February 2026. Also, in November 2025, Fraser Netshishivhe (Fraser) commenced employment with GNG Marketing with the idea that he would take over when De Beer retired. De Beer was to do handover to Fraser, in particular where it came to the top 20 customers of the Polokwane Depot. However, and according to GNG Marketing, a proper handover never happened. De Beer disputes that he did not do a handover, but significantly, he does not say that he visited any customer together with Fraser.

[31] On 11 February 2026, Marco Niebuhr (Niebuhr), one of the members of GNG Marketing, had a telephone conversation with Fraser. In this conversation, Fraser told Niebuhr that he heard from customers, when visiting them, that De Beer had told then that he intended '*to do his own thing*' in the funeral industry after his retirement from GNG Marketing. On 11 February 2026, Niebuhr called De Beer to enquire about what he had heard from Fraser, and according to Niebuhr, De Beer then told him that he was qualified in woodwork and that he intended to restore tables and chairs in his retirement. Nothing was said in this conversation about doing his own thing after retirement. De Beer disputes the contentions by GNG Marketing as to what customers may have said as being hearsay, and states that he never told customers that he would personally sell caskets or domes in competition with GNG Marketing.

[32] On 12 February 2026, Niebuhr asked Jackie Delport (Delport), the key accounts manager, to contact the top 20 customers in Polokwane to enquire whether they were satisfied with Fraser's service. This had nothing to do with checking on De Beer. It is in the course of these interactions that some of these customers asked Delport if she was aware that De Beer would start selling his own caskets and domes after he retired. Delport confronted De Beer about this, and this then led to De Beer contacting Niebuhr that same afternoon. De Beer then told Niebuhr that his sons intended to start a business in the funeral industry. He explained further that he had advised the customers during visits to them, when they asked what he would do after his retirement, that he would be retiring and that his sons would start a business and he would '*be around*'. Again, De Beer simply disputes these contentions by GNG Marketing as to what customers may have said as hearsay, and contends that he never told customers that he would personally sell caskets or domes in competition with GNG Marketing. However, he does not dispute the content of conversations he had with Niebuhr and what he told Niebuhr on 12 February 2026, as alleged by Niebuhr. Delport deposed to a confirmatory affidavit concerning what the customers told her.

[33] On 16 February 2026, and in an ordinary operations discussion with De Beer, he expressed his sentiments that he was the one that built up the Polokwane branch, and that he had kept a complete record of the branch's performance across 17 years, including financials and invoices. Niebuhr warned De Beer that he would not be entitled to share that information with anyone, especially considering his concession that his sons were going to enter the industry. De Beer then told Niebuhr that he would not give his sons information, but that he would help them in their business, which included using his plot for storage. In the answering affidavit, De Beer does not dispute the contents of the conversation on 16 February 2026 referred to above. He also confirms that he stated in this discussion that he had a lack of pension provision and needed to continue to earn an income.

[34] Because of De Beer had said in the conversation on 16 February 2026 that he does not have a pension and needed to survive financially, it was

decided by Niebuhr to offer De Beer a position to continue working for the GNG Marketing's business in Polokwane. He was offered a contractor's position managing the warehouse, whilst Fraser would be responsible for sales. Niebuhr also asked De Beer if he could stay on until the end of March 2026 to conduct the handover with Fraser which had not been properly done. De Beer said he would think about it. However, and on 27 February 2026, De Beer informed Niebuhr that he discussed the offer with his sons but there was 'no turning around' regarding DB Caskets, and that his employment would end on 27 February 2026. This is not disputed by De Beer.

[35] It is common cause that Mr De Beer's two sons, Frederik Pieter De Beer and Pierre Louwrens De Beer, commenced the business of DB Caskets. This business was registered on 1 November 2025. The registered address of the business is De Beer's home. The business premises and storage facilities for DB Caskets is also provided by De Beer. DB Caskets would buy their stock from Richmond Coffins, a manufacturer in direct competition to the GNG Group with whom De Beer was familiar. On his own version, De Beer does provide some assistance to his sons in the business of DB Caskets. In fact, one of his sons even resides overseas, and would obviously not even be involved in the day to day operation of the business.

[36] According to GNG Marketing, DB Caskets would be a direct competitor to GNG Marketing in Polokwane. De Beer does not entirely dispute this. He says that DB Caskets does not manufacture caskets and does not have a nationwide supply structure like GNG Marketing does. He seeks to distinguish DB Caskets by saying that it buys caskets and domes from suppliers and then resells them. But what appears from the evidence is that it is not GNG Marketing that does manufacturing and nationwide supply, but that is a Group activity. Of relevance *in casu*, GNG Marketing operates the Polokwane Depot which is in essence a seller of caskets and domes, being the exact same products as those sold by DB Caskets. This business of selling caskets and domes out of the Polokwane Depot is exactly the same business as DB Caskets, in exactly the same area.

[37] DB Caskets, after the departure of De Beer from GNG Marketing, launched it public profile on the internet, by way of its own website. The website records as follows, as to why any prospective customer should partner with DB Caskets: *'… With over 18 years of experience in the funeral industry, we bring deep expertise and dedication to this newly established wholesale business. We've built our reputation on integrity, quality and reliable service to funeral professionals …*'. None of this can relate to De Beer's sons, as they have no prior experience or involvement in the industry. This clearly ties De Beer's personal position to the business. De Beer does not deny that the reference to 18 years of experience is a reference to his experience, but he seeks to make it off as '*a vague marketing statement*'.

[38] According to Niebuhr, De Beer specifically told him that the business of DB Caskets is necessary to put bread on the table. Other than again disputing that he is involved in the business of DB Caskets in any manner of form, De Beer does not deal with this pertinent statement in the answering affidavit. He does admit working at the premises of DB Caskets, but states that he was just assisting by constructing dome stands and restoring tables and chairs, pursuant to his handyman experience.

[39] On 27 February 2026, being the date of departure of De Beer, Allied Business Associates, the representatives of GNG Marketing at the time, sent a letter of demand to him. In this letter of demand, reference was made to the restraint agreement and its contents. It was alleged that De Beer was soliciting customers, referring to the earlier interactions with customers dealt with above, and that he was involved in setting up a competing business. An undertaking was demanded from him that he would not embark upon this course of conduct and would adhere to his restraint of trade. No deadline was given to provide this undertaking.

[40] In the course of March 2026, the business of DB Caskets then started. As discussed earlier in this judgment when dealing with urgency, GNG Marketing became dissatisfied with the delays occasioned by its representatives in dealing with this, and terminated their mandate on 24 March 20205, and then appointing its current attorneys of record on 25

March 2026. These attorneys then sent a formal letter of demand to De Beer on 27 March 2026, again referring to his restraint of trade and the terms thereof. It was contended that he was now involved in the business of DB Caskets in competition with GNG Marketing, in breach of his restraint of trade. It was also alleged that he was pursuing GNG Marketing's customers. An undertaking was demanded from him to immediately cease this alleged unlawful conduct. A similar letter of demand was also sent to DB Caskets itself.

[41] DB Caskets answered on 31 March 2026, saying De Beer was not employed by nor engaged with DB Caskets, nor was he involved in the operations, management or activities of the business. As such, DB Caskets indicated that it was not willing to provide the undertakings demanded, and any issue GNG Marketing may have with De Beer with him needed to be addressed with him personally. The response was penned by one of De Beer's sons. There was no answer forthcoming from De Beer at this time.

[42] On 1 April 2026, Niebuhr instructed the IT service provider of GNG Marketing to inspect De Beer's e-mail account on the servers in order to determine if any confidential information had been shared outside the business. On 2 April 2026, the service provider informed Niebuhr that a number of e-mails had been entirely deleted from the server by De Beer, not only from the sent items folder, but also from the deleted items folder. The service provider managed to recover an e-mail sent on 1 December 2025 from De Beer's company e-mail address to his private e-mail address containing a schedule of payments received in the branch since the inception of De Beer's employment at the branch, broken down month by month with particulars of which customers paid. The schedule also contained customer particulars. This e-mail was sent to himself after he had been informed of his retirement and after his sons had registered the DB Caskets business. According to GNG Marketing, there would be no reason for him to send this document to himself.

[43] De Beer does not dipsute that he forwarded the information concerned to his personal e-mail. He explains, in the answering affidavit, that: '*The spreadsheet referred to by the Applicant formed part of my ordinary*

commission reconciliation and customer account administration which I personally managed over many years. The Applicants were at all relevant times aware that I remotely and transmitted such spreadsheets between work and personal email accounts for operational purposes. Such conduct occurred openly over an extended period and without objection from the Applicants …'. He further explains that: '*… The file or data referred to was created by me and saved on the company servers. The majority of the content was used daily to work out the sales commission per month and to assist with the customer accounts recon …*'. De Beer states that GNG Marketing has provided no evidence that the information on this spreadsheet was disclosed to DB Caskets or used by it. However what is markedly absent from this explanation is a pertinent statement by him that he never shared it with DB Caskets and that he is not using it to assist DB Caskets. Only he would know what he did with the information. But he does say that he has now deleted all this information. Also, De Beer has offered no explanation why he deleted this e-mail both from his sent items folder and the deleted items folder.

[44] In the founding affidavit, GNG Marketing states that on 7 April 2026, one of its top 20 customers in Polokwane (it did not want to name the customer) informed it that they were now purchasing their caskets from DB Caskets, and had been doing so since March 2026. GNG Marketing explains that this customer used to buy between 10 to 20 of its ¼ view caskets per month, but this in explicably stopped in March 2026. Significantly, neither De Beer not DB Caskets come out to address this. The high-water mark of the response is that this is inadmissible hearsay, despite the direct evidence of this inexplicable loss of sales.

[45] GNG Marketing in the founding affidavit also refers to another instance of a telephone conversation with another one of its top 20 customers in Polokwane, which took place on 9 April 2026. In this conversation, the customer concerned told GNG Marketing that he is now buying directly DB Caskets. Fraser later contacted to customer to ask if he had any orders for the week, and the customer mentioned that he was at the premises of DB Caskets buying caskets, and undertook to send pictures of this. The

customer did send these pictures, and in these pictures, it can be seen that the customer concerned is meeting with De Beer at the premises of DB Caskets buying caskets. Again, all of this is disputed by De Beer as being inadmissible hearsay.

[46] The answer by De Beer to the letter of demand on 27 March 2026 came on 7 April 2026, by way of a letter from his attorneys. In this letter, it was disputed that De Beer has approached any of GNG Marketing's customers, and it was requested a list of these customers and the dates when they were approached be provided. No mention was made of De Beer's involvement or non-involvement in DB Caskets. In the letter, De Beer's employment contract and the restraint agreement is asked for. Significantly, the letter records: '*Your client is well aware that our client was obliged to retire and they were also aware that our client had indicated to them that he needed to continue working in order to survive …*'.

[47] The attorneys for GNG Marketing replied the same day (7 April 2026). In this reply, the agreements requested were provided. It was also proposed that instead of litigation, the parties first try and resolve the matter by way of an undertaking to comply with the restraint agreement. A response to this proposal was requested by 8 April 2026. No response was forthcoming, and the application followed about a week later.

[48] After delivery of the application, and on 20 May 2026, the attorneys for GNG Marketing informed De Beer's attorneys by way of a letter that its employees had seen De Beer attending a funeral expo on behalf of DB Caskets and engaging persons that were customers of GNG Marketing at the expo. What the letter was referring to was to the AFPO funeral expo held on 17 – 19 May 2026 (the expo). This funeral association (AFPO), which arranges the expo, normally acts as brokers between the applicants and undertakers. Up to 250 undertakers attend the expo. Attendance at the expo is by direct invitation only. GNG Marketing has produced photographs of De Beer at the expo, in front of the DB Caskets stand, dealing with interested parties. In fact, Delport, who attended at the expo on behalf of the GNG Group, personally witnessed De Beer dealing with two customers of GNG Marketing, being BM Dynamics and Kgae Funeral Place.

[49] De Beer admits that he attended at the expo and that attendance at the expo is by invitation only. He seeks to explain that DB Caskets received an invitation from Richmond Coffins via WhatsApp to visit the expo, and he merely attended the expo as a visitor. But what he does not explain is how he could attend the expo as a visitor on DB Casket's ticket, and why he is seen manning DB Casket's stand and dealing with customers.

[50] GNG Marketing has further provided photos of De Beer at his premises, from which DB caskets actually conducts business and stores stock, in which De Beer can be seen directly engaging with a member of AFPO, which is also a customer of GNG Marketing, inside the warehouse on the premises, showing off the caskets in the warehouse. Through AFPO, De Beer can deal directly with GNG Marketing's customers. In answer, De Beer does not squarely address the photographs of him engaging with an AFPO representative at DB Caskets's premises and says the photographs "*merely depict individuals engaged in conversation*'. He needed to properly explain this.

[51] The aforesaid being the pertinent facts in this case, I will now turn to deciding the application, starting with the issue of the existence of the restraint.

<u>The existence of the restraint</u>

[52] In the supplementary answering affidavit filed by De Beer on 27 May 2026, he contends that there exists no valid restraint. This contention was based on an allegation that when De Beer was first provided with a copy of the restraint agreement, it did not contain a signature by GNG Pine, his employer at the time when it was concluded. He then refers to the fact that when the application was brought, the restraint agreement attached was signed by the employer. Based on this, he alleges it was signed after the fact, and thus, without a restraint signed by his employer, there was no valid restraint in existence. I may add that the applicants explained, in the replying affidavits, that there always existed a restraint agreement signed by GNG Pine and such agreement was provided to De Beer, meaning the allegation made by him was

not true. When this matter was argued before me, it was indicated that this point was not persisted with, so I need not decide it. In any event, De Beer does not dispute that he signed the restraint agreement and was aware of its terms. This would have been a spurious point and was rightly abandoned.

[53] In his heads of argument, De Beer pleads: '*The non-compete agreement was entered into between GNG Pine (First Applicant). It is confirmed that no written variation, substation or amendment was ever concluded between the parties. Accordingly, any purported reliance by the Applicants upon this agreement, or any attempt to extend its terms in favour of the Second Applicant is without legal or factual foundation in the absence of an application to rectify the agreement*.' This appears to be a suggestion that the applicants must specifically apply to have the restraint agreement rectified by substituting GNG Marketing for GNG Pine as employer party to the agreement, and without doing so, there is no restraint agreement in favour of GNG Marketing. This contention is simply entirely lacking in merit, for the reasons to follow.

[54] It is common cause that when the restraint agreement was concluded, it was concluded between De Beer and GNG Pine. It is also common cause that in August / September 2013, the business of GNG Pine relating to *inter alia* the Polokwane Depot was sold GNG Marketing as a going concern, with its good will, and that goodwill included the restraint agreement of De Beer. And lastly, it is common cause that the employment of De Beer transferred to GNG Marketing in terms of section 197 of the LRA.

[55] The effect of a transfer in terms of section 197 of the LRA is that the old employer is automatically substituted by the new employer, as if the new employer was always the employer.[11] As explained *Mobile Telephone Networks (Pty) Ltd v Pillay and Others*[12]:

> 'Section 197(2) of the LRA spells out the position of the new employer and the employees, unless otherwise agreed by them, as contemplated in that subsection. The same terms and conditions that were applicable to the

[11] See *National Education Health and Allied Workers Union v University of Cape Town and Others* (2003) 24 *ILJ* 95 (CC). at para 65.
[12] (2019) 40 ILJ 2011 (LAC) at para 19.

> employees under the old employer 'continue in force' under the new employer. The new employer 'steps into the transferor's shoes, and after the transfer is affected, simply employs the transferred employees as if they had always been on its payroll'.

Thus, for all intents and purposes, GNG Marketing must be read as the employer party to the restraint agreement, as if that was always the case.

[56] It must follow that no rectification of the restraint agreement is necessary nor required. What has happened, by operation of law is that when section 197 triggered the transfer, it automatically substituted the identity of the employer in all respects, where it comes to the employment relationship between the parties. This was recognised in *Slo-Jo Innovation (Pty) Ltd v Beedle and Another (1)*[13], where the Court held:

> 'The Labour Appeal Court (LAC) held in *Bonfiglioli SA (Pty) Ltd v Panaino* (*Bonfiglioli)* that the restraint agreement is geared at protecting the employer's proprietary interest after the employee has left the employer's employment and the legitimate object is to protect the employer's goodwill and customer connections. The LAC confirmed that the restraint remains effective for a specified period after the employment relationship has come to an end. If the old employer is substituted by the operation of law with a new employer, the restraint is still enforceable as the object remains to protect the employer's interests.
>
> There is no merit in Ms Beedle's submissions that the terms of a restraint agreement do not pass from one party to another, that the applicant has no contractual restraint of trade agreement with her and that there is no cause of action for the relief sought. Ms Beedle's contract of employment, including the restraint of trade, transferred to the applicant and the obligation Ms Beedle had agreed to in the restraint of trade undertaking, transferred to the applicant.'

[57] Especially where the restraint of trade is considered part of the goodwill of the business, it is automatically transferred to the new employer without more. This was dealt with by the Full Court in *Securicor (SA) (Pty) Ltd and Another v*

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[13] (2023) 44 ILJ 839 (LC) at paras 40 – 41.

Lotter and Others[14]. The Court recognised that the effect of section 197 is not upon the content of the rights and obligations existing at the time of transfer of a business, but rather on the identity of the person or legal entity against whom the rights may be enforced and to whom the obligations are now owed.[15] The Court succinctly said:[16]

> '… What s 197 achieves is to remove the requirement of consent referred to in the italicized portion of the quotation, nothing more. It remains a cession of rights and a delegation of obligations, albeit a statutorily imposed one. The content of the rights and obligations remain the same after the cession and delegation. But they are now to be enforced by, and owed to, another. …'

And on the issue concerning whether a restraint of trade is part of the goodwill of the business, the Court decided:[17]

> '… in order to determine whether a restraint agreement survives the transfer of a business under s 197 of the Labour Relations Act, it needs to be determined *as a matter of fact* whether the restraint formed part of the goodwill of the business and whether that goodwill formed part of the business being transferred as a going concern in terms of the section. This is an objective factual enquiry which will depend on the circumstances of each case. If this factual enquiry establishes that the restraint formed part of the transfer of the business the employee's obligations under the restraint are owed to the new employer and the new employer is entitled to enforce the restraint against the employee. The content of the rights so ceded and the obligations so delegated do not become greater or lesser by virtue of the provisions of s 197.'

[58] *In casu*, and as said, it was undisputed that section 197 applied and the restraint of trade was part of the goodwill of the business that was transferred. As such, it is undeniable that GNG Marketing is entitled to enforce the restraint agreement against De Beer. No rectification is necessary, and this point raised by De Beer must fail. I will now turn to deciding the merits of the application.

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[14] (2005) 26 ILJ 1029 (E).
[15] Id at para 10.
[16] Id at para 11.
[17] Id at para 12. See also *Prism Holdings Ltd and Another v Liversage and Others* 2004 (2) SA 478 (W) at 483A-B; *FNB Insurance Brokers v Grange* (J252/18) [2018] ZALCJHB 77 (21 February 2018) at para 9.

Restraint principles

[59] It is trite that restraints of trade are valid and binding, and as a matter of principle enforceable, unless the enforcement thereof is considered to be unreasonable.[18] A restraint of trade also does not infringe on the constitutional right to free economic activity.[19] What has become clear in the case law is that where it comes to deciding whether to enforce a restraint of trade, a balanced approach has been adopted, between the two concepts of the right to earn a living and the freedom to contract. These two concepts are not mutually exclusive and instead, both apply in the case of a restraint of trade, with the balance then coming in where it concerns deciding whether enforcement of the valid and binding restraint is reasonable or unreasonable.[20] This balance was succinctly identified in *Reddy v Siemens Telecommunications (Pty) Ltd*[21] where the Court explained:

> 'A court must make a value judgment with two principal policy considerations in mind in determining the reasonableness of a restraint. The first is that the public interest requires that parties should comply with their contractual obligations, a notion expressed by the maxim *pacta servanda sunt*. The second is that all persons should in the interests of society be productive and be permitted to engage in trade and commerce or the professions. Both considerations reflect not only common-law but also constitutional values. Contractual autonomy is part of freedom informing the constitutional value of dignity, and it is by entering into contracts that an individual takes part in economic life. In this sense, freedom to contract is an integral part of the fundamental right referred to in s 22. Section 22 of the Constitution guarantees

[18] *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A) at 891B-C; *Reddy v Siemens Telecommunications* (2007) 28 ILJ 317 (SCA) at paras 14; *Labournet (Pty) Ltd v Jankielsohn and Another* (2017) 38 ILJ 1302 (LAC) at para 39; *Ball* (supra) at para 13; *Esquire* (*supra*) 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.
[19] *Reddy (supra)* at paras 15 – 16. See also *Fidelity Guards Holdings (Pty) Ltd t/a Fidelity Guards v Pearmain* 2001 (2) SA 853 (SE) where the Court said: '*The Constitution does not take such a meddlesome interest in the private affairs of individuals that it would seek, as a matter of policy, to protect them against their own foolhardy or rash decisions*'. See further *Knox D' Arcy Ltd and Another v Shaw and Another* 1996 (2) 651 (W) at 660I-661A; *Plumblink SA (Pty) Ltd v Legodi and Another* (2020) 41 ILJ 1743 (LC) at para 24; *Vumatel (Pty) Ltd v Majra and Others* (2018) 39 ILJ 2771 (LC) at para 28.
[20] As explained in *Michelin Tyre Company South Africa (Pty) Limited v Morgan and another* 2023 JDR 1339 (GJ) at para 60: *'… 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 …'*.
[21] 2007 (2) SA 486 (SCA) at para 15.

'[e]very citizen . . . the right to choose their trade, occupation or profession freely' reflecting the closeness of the relationship between the freedom to choose a vocation and the nature of a society based on human dignity as contemplated by the Constitution. …'

[60] This balance was pertinently dealt with in two recent judgments of the LAC. First, in *Torrente and Another v Grant Monaghan and Associates Incorporated*[22] it was held:

> 'In general, a court which is required to evaluate a restraint of trade agreement has also to engage with the reasonableness of the restraint. It is now trite law to note that this enquiry is a value judgment which involves a consideration of a public interest which requires that parties to a contract should comply with their contractual obligations (pacta servanda sunt) and the principle reinforced in s 22 of the Constitution of the Republic of SA 1996, namely that every citizen has a right to choose their trade, occupation or profession freely. As stated by this court in *Ball v Bambalela Bolts (Pty) Ltd & another*, a court seeks to achieve a balance between the respective gravitational pull of pacta servanda sunt and s 22 of the Constitution by carefully examining the nature of the activity prevented by the relevant clause, the area of operation of the restraint, and the overall balance of the competing interests between the parties.

And in *Beedle v Slo-Jo Innovations Hub (Pty) Ltd*[23] it was stated as follows:

> '… Although the onus is upon the appellant to show the unreasonableness of the restraint into which it has entered, the public policy enquiry which is central to such a dispute involves considering a balance between the restraint concluded by the parties and the consequence thereof, whereby the employee can be prevented from utilising her skill and knowledge in the pursuit of her chosen trade or profession; as guaranteed in s 22 of the Constitution, …'

[61] Whether the enforcement of the restraint of trade against De Beer would be reasonable is dependent upon deciding the following questions set out in

[22] (2024) 45 ILJ 798 (LAC) at para 21.
[23] (2023) 44 ILJ 2493 (LAC) at para 35.

Basson v Chilwan and Others[24]: (a) Does the one party have an interest that deserves protection?; (b) If so, is that interest threatened by the other party?; (c) 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. More recently, a further enquiry has been added, which can be called question (e), being whether the restraint goes further than necessary to protect the relevant interest.[25]

[62] This Court and the Labour Appeal Court have been consistently applying these five considerations in determining whether the enforcement of a restraint of trade would be reasonable.[26] Deciding each of these considerations is a determination on the facts of that particular case, applying, as held in *Ball supra*[27], the following approach:

> '… the determination of reasonableness is, essentially, a balancing of interests that is to be undertaken at the time of enforcement and includes a consideration of 'the nature, extent and duration of the restraint and factors peculiar to the parties and their respective bargaining powers and interests …'

[63] The protectable interest of an applicant in a restraint of trade can be found in one or both of two considerations, being confidential information (trade secrets), or trade connections.[28] In *Labournet (Pty) Ltd v Jankielsohn and Another*[29] 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

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24 1993 (3) SA 742 (A) at 767G-H.
25 *Jonsson* (*supra*) at para 44; *Van Wyk* (*supra*) at para 15; *Esquire* (*supra*) at paras 50 – 51.
26 *Labournet* (*supra*) at para 42; *Jonsson (supra*) at para 44; *Vox Telecommunications (Pty) Ltd v Steyn and Another* (2016) 37 ILJ 1255 (LC) at paras 28 – 29; *Shoprite Checkers* (*supra*) at paras 23 – 24; *Benchmark Signs Incorporated v Muller and another* [2016] JOL 36587 (LC) at para 15.
27 Id at para 17. See also *Labournet* (*supra*) at para 40.
28 *Dickinson Holdings Group (Pty) Ltd and Others v Du Plessis and Another* (2008) 29 *ILJ* 1665 (N) at para 32; *Basson (supra)* at 769 G – H; *Bonnet and Another v Schofield* 1989 (2) SA 156 (D) at 160B-C; *Hirt and Carter (Pty) Ltd v Mansfield and Another* (2008) 29 ILJ 1075 (D) at para 37; *Esquire* (*supra*) at para 27; *Sibex Engineering Services (Pty) Ltd v Van Wyk and Another* 1991 (2) SA 482 (T) at 502E-F; *FMW (supra)* at para 36; *Vox* (*supra*) at para 30.
29 (2017) 38 ILJ 1302 (LAC) at para 41.

of such interests is not closed, but confidential information (or trade secrets) and customer (or trade) connections are recognised as being such interests. …'

[64] Confidential information would be:[30] (a) Information received by an employee about business opportunities available to an employer; (b) information that is useful or potentially useful to a competitor, who would find value in it; (c) Information relating to proposals, marketing or submissions made to procure business; (d) information relating to price and/or pricing arrangements, not generally available to third parties; (e) information that has actual economic value to the person seeking to protect it; (f) customer information, details and particulars; (g) information the employee is contractually, regulatory or statutory required to keep confidential; (h) Information relating to the specifications of a product, or a process of manufacture, either of which has been arrived at by the expenditure of skill and industry which is kept confidential; and (i) information relating to know-how, technology or method that is unique and peculiar to a business. Importantly, the information summarized above must not be public knowledge or public property or in the public domain. In short, the confidential information must be objectively worthy of protection and have value.

[65] Trade connections as an interest worthy of protection would be where the employee has access to customers and is in a position to build up a particular relationship with the customers so that when he or she leaves employment and becomes employed by a competitor, the employee could easily or readily induce the customers to follow the employee to the new business.[31] Whether the employee can be seen to have the ability to exert this kind of influence, is dependent upon: (a) the duties of the employee; (b) the employee's particular personality and skill; (c) the frequency and duration of contact between the employee and the customer(s); (d) the nature of the relationship between the employee and the customer(s) and in particular whether the relationship

[30] See *Dickinson (supra) at* para 33; *Jonsson* (*supra*) at paras 46 – 49; *David Crouch Marketing CC v Du Plessis* (2009) 30 ILJ 1828 (LC) at para 21; *Esquire (supra)* at para 29; *Experian* (*supra*) at para 19.

[31] See *Rawlins and another v Caravantruck (Pty) Ltd* 1993 (1) SA 537 (A) at 541D-F; *FMW* (*supra*) at paras 46 – 48; *Esquire* (*supra*) at paras 31 – 32; *Experian* (*supra*) at para 18; *LR Plastics (Pty) Ltd v Pelser* [2006] JOL 17855 (D) at para 26.

carried with it a notion of trust and confidence; (e) the knowledge of the employee concerning the particular requirements of the customer and the nature of its business; (f) how competitive the rival businesses are, and (d) the nature of the product or services at stake.[32]

[66] The seniority of the employee concerned is also an important consideration where it comes to evaluating the existence of a protectable interest.[33] The more senior the employee, the more likely it is that the employee would be entrenched with what can legitimately be considered to be a protectable interest based on the above two considerations.[34] Seniority is not just the level of the employee in the organization of the erstwhile employer, but also includes factors such as the length of service, position, influence, knowledge, expertise, nature of duties, relationships and even the particular person of the employee.

<u>The protectable interest</u>

[67] Despite what is in my view unfounded protestations by De Beer, I am satisfied that GNG Marketing has illustrated that it has a proper projectable interest in this case. This protectable interest is found in the form of both confidential information and trade connections. It is undisputed that the industry is very competitive, with a limited availability of customers. From the evidence, it is apparent that there is very little in the form of competitive pricing that would separate one competitor from another. Rather, it seems that customer relationships are key to securing and then maintaining business. The fact is that De Beer has been at and running the Polokwane Depot since inception. He has over the last 18 years at the Depot established a close working relationship with all customers and was directly involved in significantly expanding the customer base. On his own version, De Beer concedes the existence of such a close working relationship with customers. There similarly can be no doubt that De Beer was privy to a substantial amount of confidential

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[32] *Caravantruck* (*supra*) at 541F-I; *FMW (supra)* at para 45; *Aquatan (Pty) Ltd v Jansen van Vuuren and Another* (2017) 38 ILJ 2730 (LC) at para 24.
[33] See *Dickinson* (*supra*) at para 38; *Stewart Wrightson (Pty) Ltd v Minnitt* 1979 (3) SA 399 (C) at 404B-C; *Random Logic (Pty) Ltd t/a Nashua*, *Cape Town v Dempster* (2009) 30 ILJ 1762 (C) at para 32; *Experian* (*supra*) at para 43; *Jonsson (supra)* at para 51.
[34] See *David Crouch* (*supra*) at para 21; *Plumblink* (*supra*) at para 30.

information. To put matters into the proper perspective, he in essence ran the entire Polokwane Depot for close on two decades. He was responsible for reporting, invoicing, collections, stock control, bank reconciliation and in particular, all customer information. On his own version, he maintained detailed records of his own. There can be little doubt that should De Beer be involved in any competing business in the area covered by the Polokwane Depot, that would put the customer base and business of GNG Marketing in the region at severe risk. This will be dealt with in more detail later.

[68] De Beer makes much in his answers about the fact that he had experience in the industry prior to joining the applicants, and in fact had run a similar funeral business of his own. However, even if true, this completely misses the point. It does not matter, for the purposes of establishing GNG Marketing's protectable interest, where De Beer may have acquired his knowledge of and experience in the industry from. The fact is that he was roped in more or less at the start of the applicants' operations in Polokwane when there were only six customers. What he then built up over 18 years, as was specifically required of him in terms of his employment contract, job description and duties at the applicants, and for which he was handsomely rewarded, is a successful operation with hundreds of customers. The applicants have said that he is one of the highest earners in the business.[35] Therefore, what was established is a business with substantial goodwill, which must be seen to be an intangible asset that accrues to the employer's business.[36] This goodwill belongs to GNG Marketing as De Beer's employer, and is an asset in its business. As such, GNG Marketing is entitled to protect it, no matter how it came about. In *Jacobs v Minister of Agriculture*[37] the Court held:

[35] I am aware that De Beer says his monthly salary was only R9 000,00, but what he does not say is that his remuneration is principally based on a lucrative commissions structure, which the applicants have pertinently pointed out.

[36] As said in *Avis Southern Africa (Pty) Limited and another v Porteous and another* 2023 JDR 3937 (GJ) at para 44: '*… This accords with the doctrinal principles that underpin restraints of trade and which hold that the protection of the proprietary interest of the employer's business in its trade secrets and trade connections contribute to the goodwill of the business …*'. *See also Van der Watt v Jonker* 2011 JDR 1162 (SCA) at para 12; *Botha and Another v Carapax Shadeports (Pty) Ltd* 1992 (1) SA 202 (A) at 212B-D.

[37] 1972 (4) SA 608 (W) 621A-B.

'… As to the nature of goodwill there have been many judicial pronouncements, and I shall have to refer to some of those later. At this stage it will suffice if I say that *goodwill is an intangible asset pertaining to an established and profitable business, for which a purchaser of the business may be expected to pay, because it is an asset which generates, or helps to generate, turnover and, consequently, profits …'*

And further, in *Bonfiglioli SA (Pty) Ltd v Panaino*[38] the Court had the following to say:

'… The restraint agreement is therefore geared at protecting the employer's proprietary interest after the employee has left the employer's employment. In *Reeves & another v Marfield Insurance Brokers CC & another*, the object of a restraint of trade term was described as follows:
'The legitimate object of a restraint is to protect the employer's goodwill and customer connections (or trade secrets) and the restraint accordingly remains effective for a specified period (which must be reasonable) after the employment relationship has come to an end.''

[69] The point of departure in deciding this case is therefore to determine if De Beer is conducting himself in a manner that constitutes an attempt to appropriate the goodwill of GNG Marketing. And in this respect, proper regard must be had to the business of DB Caskets. It was established at more or less the same time De Beer was informed of his upcoming retirement. It was purportedly established by his two sons. There are no suggestions that any of his two sons have any prior experience or involvement in such industry. In fact, one son resides overseas. The business address for DB Caskets is De Beer's address. The business is also conducted from De Beer's premises. It sells the same products as GNG Marketing to the same customer base. The website of the business relies on and refers to the 18 years of experience of De Beer in the industry as a basis to establish the business's reputation. And

[38] (2015) 36 ILJ 947 (LAC) at para 24. See also *Rawlins* (*supra*) at 542F-I where the Court held, with specific reference to an employee canvassing customers and selling to them, as follows: *'… 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 …'*. See further *TWK Agriculture Ltd v Wagner and Another* [2015] ZALCCT 50 (12 August 2015) at para 8.

lastly, De Beer conceded that he did not adequately provide for his pension and the business was needed to '*put bread on the table*''. In my view, this entire state of affairs indicates that De Beers fingerprints are all over the business of DB Caskets', making him involved.

[70] I accept that De Beer and his one son running DB Caskets have sought to reiterate that De Beer is not involved in the DB Caskets business at all, in any shape or form. But I find this hard to believe and I consider this to be a version that is patently implausible to the extent that it can comfortably be rejected. In addition to all the circumstances I have referred to earlier, it surely is much more than pure coincidence that the business of DB Caskets starts operating as soon as De Beer left GNG Marketing. Added to this is the fact that when De Beer made MGM Marketing aware of his financial predicament upon retirement, he was offered a contract position to manage the warehouse, however and after on his own version consulting with his sons, he made it clear that his decision to leave was irreversible. Why would he need to even consult his sons if he was not involved in DB Caskets at all. In my view, the evidence paints a clear picture, being that the business was set up after De Beer had been informed of his retirement, that business needed de Beer to commence operations, and De Beer needed that business to earn an income.

[71] I believe that De Beer clearly knew that if he set up a competing business to that of GNG Marketing when he left, he would face a difficulty as a result of the restraint agreement. That is why the business was set up in the name of his sons. This is nothing more than camouflage. Especially telling in this regard is the fact that he attended at the expo on 17 to 19 May 2026, manning the stand at DB Caskets, and dealing with customers there. This expo is at invitation only event, and I find it unlikely that such a brand new business as DB Caskets would crack the nod of an invitation if De Beer was not involved. His explanation that he attended as a visitor is patently false. Why would he even visit, and man the DB Caskets stand, if he, as he alleged, was not involved in the industry any longer. And how could he even attend as a visitor on DB Casket's invitation, if he as not with DB caskets. There certainly was no personal invitation to him. All this can only make sense if De Beer is directly involved in the business of DB Caskets. Added to this, he entertained an

AFPO representative at the premises of DB Caskets, showing the stock of DB Caskets. Again, why would he do this if he was not even involved in the industry or the business, as he alleges. There can be little doubt that De Beer is clearly involved in the business of DB Caskets, which is a direct competitor of GNG Marketing in the same area, and selling the same products to the same customer base.

[72] Then there is the background leading up to De Beer's departure followed by other factors thereafter. On his own version, and when dealing with customers in February 2026 immediately prior to him leaving GNG Marketing, De Beer told them he was retiring from GNG Marketing and that his sons would be starting a funeral business. Why he would need to tell customers that his sons would be starting a funeral business is hard to understand. Leaving aside the complaints by De Beer as to the allegations relating these conversations with customers being inadmissible hearsay, the fact remains that he does dispute the contents of the several conversations between him, Niebuhr and Delport as a result of what was heard from customers. Then there was the conversation on 16 February 2026, where De Beer said he built up the Polokwane branch, and that he had kept a complete record of the branch's performance across 17 years, including financials and invoices. When Niebuhr expressed his concerns about what De Beer had said, especially considering his concession that his sons were going to enter the industry, De Beer then told Niebuhr that he would not give his sons information, but that he would help them in their business. And when presenting its business profile in the marketplace by way of a website, DB Caskets ties its reputation and alleged 18 years of experience directly to De Beer, as none of his sons have this.

[73] Lastly in this respect, there was the offer to De Beer to remain with GNG Marketing as warehouse manager whilst Fraser did sales. This option proposed to him would certainly go some way to resolving his pension predicament. But he refused this, after consulting his sons. Why he would need to consult his sons about remaining employed by GNG Marketing as warehouse manage is beyond comprehension. The only inference that can be drawn from this is that if he stayed, he could not be involved in the DB Caskets business, which was not acceptable to all of them. De Beer then says, in

refusing the offer, that there was no turnaround in the DB Caskets business. This surely shows his intentions and involvement in the same. I also consider that with Fraser doing sales, that would diminish his relationships with customers over time, which was obviously not acceptable to him, nor in his interest.

[74] In sum, I believe the evidence, considered as a whole, paints a clear picture. This picture is that De Beer decided to start his own business in the funeral industry, which is the business of DB Caskets, upon his retirement. He conceded that the business was essential to put bread on the table after this retirement. This business would be under the guise of it being a business started by his sons. But it is clear to me that without the actual involvement of De Beer, the business is likely a non-starter. He provided the premises and infrastructure. His knowledge of and contacts in the industry, as well as all the financial and operational knowledge he accrued from operating GNG Marketing's Polokwane Depot for just short of two decades, and his trade connections, makes him indispensable to the business. And once he left the employment of GNG Marketing, his behaviour was certainly consistent with someone that is involved in the business. Overall, it can only be true that De Beer is involved in the business of a direct competitor, DB Caskets.

[75] I have little hesitation in concluding that the aforesaid constituted a violation of the restraint agreement by De Beer. I believe that what happened, all facts considered as a whole, is an attack on the goodwill of GNG Marketing, so that this goodwill can serve as a springboard for the immediate growth of the new business of DB Caskets and so advantage De Beer and his sons. The following *dictum* in *Knox D'Arcy Ltd and Others v Jamieson and Others*[39] is apposite:

> '… Generally speaking, the personal relationship which the applicants' salesman builds up as indicated above with the manager or managers of a target business and which is calculated to predispose such a manager, when persuaded that his business could benefit from management

[39] 1995 (2) SA 579 (W) at 612H–I.

> consultancy services, to engage the applicants to provide such services appears to be of a confidential nature and is an element of a species of incorporeal property known as goodwill. Since the salesman has acted as an employee and the relationship is confidential, this proprietary interest is not his own to do with as he pleases. It belongs to his employer. After the salesman leaves the employment of the applicant, he is not entirely free to exploit his personal relationship with the managers of a target business for his own benefit or the benefit of a third person, such as a new employer, at least for such period as it would take to build such a confidential relationship anew. As it is sometimes put, he is not free to use the goodwill gained for his former employer as a 'springboard' with which to gain an advantage for himself, or for a new employer, in unfair competition with the first employer whose property it is …'

[76] This then brings me to the issue of confidential information *per se*. In this regard, De Beer's position occupied by him in the Polokwane Depot is important. As said, he was the manager of the branch. He was responsible for all operations, finances and customer relationships. He was seized with all the information of the business relating thereto. On his own version, he said that he kept detailed information on spreadsheets. I am quite sure that no competing business would have access to GNG Marketing's financial information, banking, and customer particulars, including buying trends. De Beer however had all this information at his disposal, which enabled him to successfully run the business at the branch. This is the kind of information and records GNG Marketing, or any business for that matter, would not want to have disseminated to a competing business, and it is certainly not in the public domain. In short, De Beer had access to and knowledge of the kind of information a business owner would have access to and knowledge of and would want to keep to itself. This equally constitutes a proper protectable interest. It is simply impossible to gainsay that this information would be of substantial value and use to a startup competitor like DB Caskets. I am satisfied that the following *dictum* in *SPP Pumps (SA) (Pty) Ltd v Stoop and Another*,[40] can equally be applied to De Beer *in casu*:

[40] (2015) 36 ILJ 1134 (LC) at para 37.

> 'In my view, the respondent acquired confidential information of the business of the applicant including personal knowledge of the customers by virtue of his duties and the relationship he had with the suppliers and customers of the applicant. It is for this reason that I am of the view that the applicant has made out a case which has not been seriously challenged. The case is that the applicant has an interest in the confidential information acquired by the respondent during his employment. There is very strong evidence that the respondent had, during his employ with the applicant, acquired confidential information which requires protection. The information which the respondent acquired, particularly the relationship with the customers, is of such a nature that when he left the applicant's employ, he posed a risk to the applicant's business if he were to join any other competitor. The level of risk rose higher when he established the second respondent and commenced conducting the business in competition with the applicant.

[77] The risk to GNG Marketing's business caused by what is summarized above where it comes to the use of confidential information is patently obvious, and that is all it has to show to succeed in establishing a breach of the restraint.[41] The Court in *IIR South Africa BV (Incorporated in the Netherlands) t/a Institute for International Research v Hall (Aka Baghas) and Another*[42] said the following:

> 'Where the ex-employer seeks to enforce against his ex-employee a protectable interest recorded in a restraint, the ex-employer does not have to show that the ex-employee has in fact utilised information confidential to it - merely that the ex-employee could do so. (See International Executive Communications Ltd (Incorporated in the Netherlands) t/a Institute for International Research v Turnley and Another 1996 (3) SA 1043 (W) ([1996] 3 B All SA 648) at 1055D - F (SA).) In short, the ex-employer 'has endeavoured to safeguard itself against the unpoliceable danger of the [ex-employee] communicating its trade secrets to a rival concern after entering their employ. The risk that the [ex-employee] will do so is one which the [ex-employer] does not have to run, and neither is it incumbent upon the [ex-employer] to inquire into the bona fides of the [ex-employee] and demonstrate that [he or she] is

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[41] See *Reddy* (*supra*) at para 20; *Den Braven* (*supra*) at para 17; *Point 2 Point Same Day Express CC v Stewart and Another* 2009 (2) SA 414 (W) at para 14; *SPP Pumps (supra)* at paras 30 and 37; *Esquire (supra)* at para 27; *Continuous Oxygen (supra)* at para 34.
[42] 2004 (4) SA 174 (W) at para 13.4.1.

> mala fide before being allowed to enforce its contractually agreed right to restrain the [ex-employee] from entering the employ of a direct competitor.'

[78] Then there is the incident of De Beer sending a spread sheet containing financial information, banking, and customer particulars by e-mail to himself on 1 December 2025. What makes this especially concerning is that this was information spanning the entire period of some 18 years De Beer had been responsible for the branch. This also happened after he had been notified of his retirement and that his employment would be ending on 27 February 2026, and after his sons had registered the business of DB Caskets. De Beer tries to explain this obvious anomaly away, by saying that he ordinarily operated remotely, and would often send information to himself to enable him to work. However, there are two obvious difficulties with this explanation. The first is timing of it being sent and scope of the information sent, which makes it unlikely that is intended for ordinary work use. But even more importantly, De Beer deleted the e-mail not only from his sent items folder, but also from the deleted items folder. He has been unable to provide a cogent explanation why he did this. The e-mail was only found as a result specialist intervention on the server. This creates serious concerns about De Beer's motives and makes it highly likely that the information was effectively copied by him for later use in the business of DB Caskets.

[79] What makes this sending of the information on 1 December 2025 even more suspect is a second explanation provided by De Beer for sending it, namely that he needed it for the purposes of calculating his commissions and for customer reconciliations. If that is true, then why would it be necessary to send the information spanning a total of 18 years. Surely only current information would be required for such purposes. Information spanning 18 years surely can have nothing to do with calculating his current commissions. This kind of explanation in these circumstances equally brings his *bona fides* into question.

[80] There are two pertinent examples in the case law which illustrate the unacceptable nature of this conduct perpetrated by De Beer. In *Van Castricum*

v Theunissen and Another[43]*,* the employer was an insurance broker and the employee was a claims clerk and underwriter who attended to claims and to underwriting matters. In the execution of her duties, the employee made use of a handwritten telephone directory which contained the contact details of the clients of the employer and was also privy to other confidential information concerning existing clients of the employer. The employee then joined a competitor of the employer as an administrative and marketing assistant, and in joining the competitor, took the handwritten telephone directory with her for use at the competitor. The Court had the following to say about the conduct of the employee in this regard:[44]

> '… What is clear from the aforesaid, is that someone who saves himself the trouble of going through the process of compilation of the document, even where it is compiled from information which is available to anybody, such a person would be interdicted if that information had been obtained in confidence. The reason is simply that confidential information may not be used as a springboard for activities detrimental to the person who made the confidential information available. It would remain a springboard even when all the features have been published or can be ascertained by actual inspection by any member of the public …'

[81] The second apposite example can be found in the judgment of *Lumax Energy (Pty) Ltd v Solastruct (Pty) Ltd*[45]. In that case as well, two employees, prior to joining a competitor of the employer, had sent e-mails to the competitor with confidential information of the employer, and then sought to delete the e-mail trial in this respect. The Court held as follows in respect of this conduct:[46]

> 'Further to the above requisites confidential information may not be used as a springboard for activities detrimental to the person who made the confidential information available. Messrs Van Rooyen and Robinson were Lumax's employees at the time that they appropriated Lumax's confidential and proprietary information. They were not only bound to keep their employers'

[43] 1993 (2) SA 726 (T).
[44] Id at 731G-H.
[45] 2021 JDR 3004 (GP).
[46] Id at para 24.

confidential information confidential but they had also bound themselves in contract to this effect.'

[82] In summary, and where it comes to confidential information, GNG Marketing has shown that it has a protectable interest. The confidential information is not in the public domain, has commercial value in the industry, and would be useful and valuable to a competitor such as DB Caskets, as it can readily be deployed in that business to the benefit of De Beer and his sons. It is in my view an untenable proposition to effectively allow De Beer, seized with all the information he has, to be associated with a direct competitor in the form of DB Caskets, in such a competitive environment as exists in this case, especially considering that De Beer is needed to get the business off the ground. As said in *Continuous Oxygen Suppliers (Pty) Ltd t/a Vital Aire v Meintjes and Another*:[47]

> '… The employee has intimate knowledge of the applicant's products and pricing; she is intimately acquainted with the prescribing doctors and the patients who use the products; and she is ideally situated to persuade those doctors and patients to use the products of her new employer - ie similar products under a different brand name, supplied by Ecomed - rather than the products supplied by her old employer that they had been using hitherto. …'

[83] Turning then to the issue of trade connections, it is equally undeniable that GNG Marketing has a legitimate protectable interest in this regard. This is established firstly, and once again, by the very nature of De Beer's position in the Polokwane Depot and what his job description and duties required of him. To describe it as simply as possible, De Beer was the manager of the branch, responsible for all operations, finances and in particular, customer relationships. He was quite good at his job, on the common cause facts. He was required, on a day to day basis, to deal directly with the customers, and would have access to confidential information about these customers. He was a trusted employee, and it was thus expected of him to maintain and cultivate a close working relationship with these customers. I accept that the kind of customer relationships at stake in this case, would constitute a proper

[47] (2012) 33 ILJ 629 (LC) at para 40.

protectable interest for the purposes of the enforcement of a restraint of trade.[48] In *Rawlins and another v Caravantruck (Pty) Ltd*[49] the Court said:

> 'The need of an employer to protect his trade connections arises where the employee has access to customers and is in a position to build up a particular relationship with the customers so that when he leaves the employer's service he could easily induce the customers to follow him to a new business …'

[84] As stated, De Beer was directly responsible for selling GNG Marketing's products in the Limpopo and Botswana regions. He was also responsible for all aspects relating to the management of such sales, and reporting to head office in this respect. He was effectively the face of GNG Marketing to the customers in the region. He made it clear, on his own version, that he was 'well-known'. He prepared quotes and invoices to customers. In the above context, De Beer had intimate knowledge of who the customers were, and what their requirements were. He also knew GNG Marketing's pricing, however I believe this is of lesser importance in this case. I am satisfied that it is highly likely that De Beer would utilise all these attributes where it came to finding customers for the business of DB Caskets.

[85] What is also concerning is the evasive answers given by De Beer to several pertinent statements made by GNG Marketing in their affidavits, where it came to involvement with customers after he left. For example, where a pertinent statement is made about a top 20 customer of GNG Marketing buying from DB Caskets since March 2026 and no longer from GNG Marketing with a resultant drop in sales, De Beer deflects providing a direct answer by calling it inadmissible hearsay and complaining that the name of the customer is not identified. But De Beer certainly knows who the top 20 customers of GNG Marketing are. With the assistance of his sons (accepting for the purposes of argument that only they run DB Caskets), it must surely be a simple matter for him to make enquiries with DB Caskets and come out and say that none of the top 20 customers of GNG Marketing buy from DB caskets. However, he remains completely silent in this regard, which in my view speaks volumes.

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[48] In *Hirt and Carter* (*supra*) at para 37 it was held: '*…. Customer goodwill and trade connections have long been regarded as proprietary interests worthy of protection*'.

[49] 1993 (1) SA 537 (A) at 541D-I. See also *Esquire* (*supra*) at para 27; *Continuous Oxygen* (*supra*) at paras 34 – 36; *FMW* (*supra*) at para 45.

[86] I am convinced that de Beer indeed called upon customers in March and April 2026 as alleged in GNG Marketing's founding affidavit, on behalf of DB Caskets, and that GNG Marketing has lost business as a result. He directly leveraged the close working relationship he established with customers as the depot manager at GNG Marketing's Polokwane Depot in calling on these customers. This is in direct violation of his obligations under the restraint of trade, and a breach of GNG Marketing's protectable interest relating to trade connections.

[87] De Beer was highly critical, in his answer's, about the lack of actual and concrete evidence that GNG Marketing has lost customers and business. Whilst I do not believe this criticism is entirely warranted, I do think that this kind of response shows that De Beer misconstrues what the enforcement of a restraint of trade is all about, where it comes to protecting trade connections. It is not even necessary for GNG Marketing to show that De Beer actually exploited trade connections, and all that must be shown is that he could.[50] In this instance, and for the above reasons, the fact that De Beer is in a position to exploit these trade connections cannot be gainsaid. I have little doubt that giving De Beer free reign, would result in him actively approaching and dealing with the customers he dealt with whilst employed at GNG Marketing. In *Medtronic (Africa) (Pty) Ltd v Kleynhans and Another*[51], the Court held as follows:

> '… It is also not incumbent upon Medtronic to enquire into the bona fides of Kleynhans and demonstrate that he is mala fide before being allowed to enforce its contractually agreed right to restrain him. In those circumstances, all that the Medtronic needs to do is to show that there is a trade connection Kleynhans could exploit should he desire to do so. The very purpose of the restraint agreement is that Medtronic did not wish to have to rely on the bona fides or lack thereof on the part of Kleynhans when he left their employ.'

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[50] See *SPP Pumps* (*supra*) at para 30; *Continuous Oxygen (supra)* at para 42; *Medtronic (Africa) (Pty) Ltd v Van Wyk* (2016) 37 ILJ 1165 (LC) at para 30; *Vox* (*supra*) at para 31.
[51] (2016) 37 ILJ 1154 (LC) at para 40. See also *Medtronic (Africa) (Pty) Ltd v Van Wyk* (2016) 37 ILJ 1165 (LC) at para 34.

[88] In my view, therefore, it is thus clear that GNG Marketing has shown the existence of a proper protectable interest where it comes to trade connections, even if it can be argued that De Beer has as yet not called upon any customer in particular. Nonetheless, I do believe he has called on customers. It is further clear that De Beer's mere association with DB Caskets puts this interest at material risk. It can perhaps be simply explained as follows. Accepting that De Beer is the power behind the throne in DB Caskets, and considering his own view that the business is necessary to put bread on his table, then surely he will pluck at the lowest hanging fruit to secure customers and an income for the business. This low hanging fruit is the customers he came to know and established a close working relationship with, over almost two decades, whilst working at GNG Marketing. I believe this is actually quite obvious.

[89] De Beer suggests in his answers that there were other factors that may influence the purchasing decisions of customers, considering that prices and catalogues are circulated widely to customers in the industry. Whilst GNG Marketing disputes that its pricing is circulated widely, I do not deem it necessary to decide this issue. For the purposes of deciding the existence of a protectable interest and breach thereof, it is not necessary to pertinently decide what other factors may influence the purchasing decisions of customers, because GNG Marketing squarely pins its protectable interest on the particular relationship De Beer has with the customers, which on the facts is undeniable. As said in *Den Braven SA (Pty) Ltd v Pillay and Another*[52]:

> '… It is not in my view necessary for an applicant in this situation to winnow the wheat of trade connections and customer contact from the chaff of other factors that may influence purchasing decisions. It suffices for the applicant to show that trade connections through customer contact exist and can be exploited by the former employee if employed by a competitor. The applicant in this case has discharged that onus.'

[90] I also consider that the conduct of De Beer is such that he simply cannot be trusted to act honourably and comply with the terms of his restraint of trade. This is demonstrated by a number of factors. First, there is his opportunistic

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[52] 2008 (6) SA 229 (D) at para 17.

denial of the validity and / or existence of the restraint of trade. The there is the issue of what appears to be completely contradictory positions adopted by him. On the one hand, he says he is not in the funeral business at all and is fixing furniture. On the other, he suggests that GNG Marketing has no proprietary interests to protect and he needs to earn a living, which implies that he is interested in the industry. He denied involvement in DB Caskets, but then says the business is needed to put bread on the table. His explanations for attending the expo, as well as for sending and then deleting the e-mail of 1 December 2025, is far from satisfactory and smacks of being contrived. And obviously, if he has no interest at all in the funeral industry and will make a living out of woodworking, then why does he fight so vehemently against an interdict that just seeks to prevent him from being involved in DB Caskets in this particular and limited industry.

[91] All said, GNG Marketing is entitled to expect De Beer to stay out of the industry and in particular, any association with DB Caskets, for a certain period of time. It is only through the lapse of time with De Beer remaining inactive in the particular industry that GNG Marketing's risk protected by the restraint will be sufficiently diminished. As said in *Vumatel (Pty) Ltd v Majra and Others*[53]:

> 'There is another nuance to considering the question of the infringement of the protectable interest. This is the lapse of time. The reasonableness of the enforcement of the restraint must be assessed at the time when the restraint is sought to be enforced. In the case of trade connections, the longer the employee has no contact with erstwhile customers, the more his or her influence over them diminishes. In the case of confidential information, there may well be some instances where confidential information does not diminish through a lapse of time. This would be where the employer, for example, had a unique and secret manufacturing method that would always be of great value to a competitor. However, where it comes to confidential information relating to general operations, marketing, planning, finances, customer details and business plans, these clearly become less and less relevant as time progresses. After all, the nature of business is that it must change to remain relevant and competitive.'

[53] (2018) 39 ILJ 2771 (LC) at para 38.

[92] Accordingly, I am satisfied that GNG Marketing has succeeded in establishing the existence of a protectable interest in relation to both trade connections and confidential information, and in establishing the existence of a breach / infringement of its protectable interest by De Beer, justifying the enforcement of the restraint of trade.

<u>Other considerations</u>

[93] Where it comes to the quantitative and qualitative weigh off to be conducted, the scope and period of the restraint is relevant. A shorter restraint and properly limited geographical area (if applicable) would mitigate in favour of enforcement, whilst an unduly long and broad restraint would mitigate against it.[54] It must also be considered whether the employee was possessed of the skills, expertise, qualifications and experience before joining the employer, as it could be seen as unfair in the weigh off to prevent the employee from earning a living under such circumstances.[55] In *Vumatel supra,*[56] the Court said:

> '…The nature of the industry is also an important consideration. The more specialized the industry is, the more the weigh off will favour the employer, as it limits the scope of the restraint and leaves much more avenues open to the employee to procure gainful employment in other industries. …'

[94] Dealing firstly with the issue of De Beer's skill, experience and knowledge of the industry, I accept that he had some experience in the industry before joining the applicants. But this was way back, and for a limited time of only about three years. I am convinced that De Beer obtained the bulk of his experience, expertise, skills and knowledge in the industry in the course of his close on two decades of employment with the applicants, having started there in 2008 to build up the Polokwane business. The industry is also very limited and specialised, leaving room for a myriad of other employment or business opportunities for him, such as for example any branch manager position. De

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[54] *Labournet* (*supra*) at para 43; *Continuous Oxygen* (*supra*) at para 47.
[55] *Automotive Tooling Systems (Pty) Ltd v Wilkens and Others* (2007) 28 ILJ 145 (SCA) at para 8; *Labournet* (*supra*) at paras 43 - 44; *Jonsson (supra)* at para 51.
[56] Id at para 39.

Beer has also explained that he has skills in woodwork, and it appears he had a woodworking business from 1993 until 2005. Enforcing the current restraint will not in any manner compromise his ability to utilise this skill in order to earn a living. After all, he represented to the applicants that this is exactly what he intended doing once he retried.

[95] Where it comes to the restraint period, De Beer had the onus to provide proper information or a factual basis upon which the restraint period would be considered to be unreasonable.[57] Even though he has not really put up a case why the two years' restraint period would be unduly excessive or unreasonable, I do consider the nature of his position at GNG Marketing and the tasks he was required to fulfil, as basis to conduct an assessment of what would be a reasonable restraint period.[58] All said, I believe that after about a year, the value of any confidential information other than customer particulars would have sufficiently diminished so as sufficiently mitigate the risk to GNG Marketing caused by De Beer's possession of the same. Where it comes to customer information and trade connections, it is my view that if GNG Marketing cannot bed its customers down within a year, it would never be able do so. I find the following *dictum* in *Sadan and Another v Workforce Staffing (Pty) Ltd*[59], where the Court reduced a two years' restraint to a year, to be insightful:

> '… Other than relying on the cursory assertion that a restraint of two years is required to protect its proprietary interest, namely its relationships with clients, the respondent has failed to provide any compelling evidence to justify such a manifestly onerous and unreasonable limitation of the appellants' constitutional rights to ply their trade and engage in commerce. To my mind, a period of two years is an inordinately long time merely to allow new employees to meet with and develop relationships with existing clients …'

[96] All said, I am of the vow that that the restraint period, in this case, would be unduly lengthy and thus unreasonable, and that a restraint period of one year would be reasonable and fair.

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[57] *Plumblink* (*supra*) at para 50.
[58] See *Waco Africa (Pty) Ltd t/a Form-Scaff v Sack and Others* (2020) 41 ILJ 1771 (LC) at para 44.
[59] (2023) 44 ILJ 2506 (LAC) at para 29.

[97] As to the restraint area, it is informed by the nature of GNG Marketing's business and the geographical scope of the activities conducted by De Beer in the course of his employment. According to De Beer, he only fulfilled his duties for the Limpopo and Botswana regions. It appears that this has been conceded by the applicants. Therefore, and even though the applicants are a nationwide business, it does not appear that De Beer conducted any nationwide activities. As made clear throughout this judgment, he ran the Polokwane operation, and this only relates to the regions of Limpopo and Botswana. The nationwide restraint thus falls to be moderated, and must be reduced to cover only the areas of Limpopo and Botswana.

[98] GNG Marketing has no alternative remedy available to it in this instance. A future damages claim based on breach of contract would be cold comfort for business lost, in a market where customers are scarce, and competition is fierce. It is much more appropriate to take De Beer completely out of the equation in the industry, for the restraint period, and so have the risk to GNG Marketing dissipate as a result. An interdict is the only way this can be achieved. As held in *Esquire supra*:[60]

> 'As I have stated above, the alternative remedy of a damages claim is cold comfort to an applicant that seeks to enforce a legitimate restraint of trade covenant. By the time a damages claim is heard, the horse had bolted and the harm is done. That harm is very difficult to repair. I am satisfied that, where a restraint of trade is enforceable, the alternative remedy of a damages claim in due course is more apparent than real …'

[99] GNG Marketing has thus satisfied all the other requirements necessary for the final relief it seeks against De Beer to be granted. In short, the weigh off favours it, and it faces real prejudice if relief is not granted, in the form of the risk created to it by way of De Beer's continued association with the directly competing business of DB Caskets. The restraint period (as moderated) and restraint area (as moderated) is reasonable, and there is no suitable alternative remedy available.

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[60] Id at para 40. See also *Plumblink* (*supra*) at para 48.

Conclusion

[100] In summary, GNG Marketing has demonstrated the existence of a clear right, having a legitimate and proper restraint of trade covenant in place with De Beer, susceptible to being enforced, where it comes to both confidential information and trade connections. GNG Marketing has also established that De Beer is indeed infringing on such protectable interest. The weighing off of interests (as moderated) favours GNG Marketing and there is no intervening issue of public interest. Finally, GNG Marketing has demonstrated the existence of an injury reasonably apprehended and has no proper alternative remedy available to it. It is thus entitled to the relief sought in the notice of motion.

Costs

[101] This then leaves only the issue of costs. This Court has a wide discretion where it comes to the issue of costs, considering the provisions of section 162(1) of the LRA. It must of course be considered that GNG Marketing was ultimately successful, and that the current dispute is principally a contract dispute, and not an LRA dispute where ordinarily costs do not follow the result. However, there are a number of other reasons why De Beer should be visited with a costs order in this case, which I will set out below.

[102] First, De Beer sought to rely on the spurious issue of his restraint of trade as being in favour of GNG Marketing to be invalid. This shows, in my view, a lack of forthrightness. Then, several the explanations provided by De Beer for his conduct were not forthright and some of it smacked of being misleading. He adopted contradictory positions, the first being that of not being involved in the industry at all, and the second being that he was entitled to earn a living in the industry. His consistent suggestions that he had nothing to do with DB Caskets was, all considered, never sustainable, and clearly contrived. He failed to engage with several important factual assertions made by GNG Marketing. Then there are also the issues of his belated filing of affidavits, which led to delays. Fairness dictates, in the circumstances, that GNG

Marketing should be entitled to its costs. But considering any adverse impact the order granted against De Beer in this judgment would have, I believe a party and party costs order at scale A is appropriate

[103] For all the reasons as set out above in this judgment, the following order is made:

<u>Order</u>

1. The application is heard as one of urgency in terms of Rule 38 as read with Rule 39.

2. The first respondent is interdicted and restrained for a period of 1(one) year, calculated from 27 February 2026, from:

    2.1 engaging directly or indirectly, either personally or as an employee, associate partner, partner, manager, agent or otherwise, or by means of any corporate or other device, in the manufacturing or selling of coffins, caskets and domes within the areas of the Limpopo Province and Botswana;

    2.2 soliciting orders, directly or indirectly, from any customers of the second applicant, for such products as are sold by the second applicant, either for himself, or as an employee of any person, firm or corporation;

    2.3 soliciting any customer of the second applicant that was a customer of the second applicant during the course of the first respondent's employment with the applicants, whether or not still a customer of the second applicant and whether or not knowledge of the customer is considered confidential information, or in any way aiding or assisting any other person to solicit any such customer.

3. The interdict granted in terms of paragraph 2.1 of this order shall in particular apply to any involvement of the first respondent in the

business of the second respondent, in any of the capacities as contemplated by such order.

4. The first respondent is interdicted and restrained from disclosing the second applicant's confidential information, including but not limited to customer, supplier, logistical, financial, research and development information, to any third party, including but not limited to the second respondent.

5. The first respondent is ordered to pay the second applicant's costs of this application on the party and party scale A, which shall include the costs reserved on 28 May 2026.

S. Snyman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Advocate T Odendaal
Instructed by:	VDT Attorneys Inc
For the First Respondent:	Higgs Attorneys Inc