



EMPLOYMENT

Take the Job – Not the Clients: Recent Cases Reinforce the Employer’s Right to Protect Its Turf

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Restraints of trade remain one of the most frequently litigated issues in South African employment law. The tension is familiar: employees are entitled to pursue their chosen occupation, but employers are equally entitled to protect the commercial interests they have spent years building.

A recent cluster of decisions – *Backsports (Pty) Ltd v Motlhanke & another* (2026) 47 ILJ 529 (LAC), *Atlas 360 Commercial Vehicle Services (Pty) Ltd v De Witt & another* (2026) 47 ILJ 561 (LC), *HR & Skills Market v Strydom & another* (2026) 47 ILJ 590 (LC) and *Corporate Business Solutions v Kenton & another* (2026) 47 ILJ 642 (GJ) – provides a useful reminder that courts remain prepared to enforce restraint agreements where genuine employer interests are at stake. Taken together, the cases reinforce a simple principle: employees are free to leave their employer, but they are not free to leave with the employer's competitive advantage.

In *Backsports*, the Labour Appeal Court dealt with a familiar argument. The employee had signed a restraint preventing him from soliciting the employer's customers and poaching its staff. During his employment he admitted to misconduct that included attempting to do exactly that. He was dismissed and the employer sought to enforce the restraint. The employee argued that because he had been dismissed, the restraint should not apply. The LAC rejected the argument. The contract expressly provided that the restraint would operate from the date of termination regardless of the reason for termination, and there was no evidence that the dismissal had been engineered simply to trigger the restraint. The clause therefore remained enforceable.

The decision is an important reminder that dismissal does not automatically neutralise a restraint. Where the agreement is clearly drafted and the employer acts in good faith, the restraint will generally operate according to its terms.

The Labour Court adopted a similarly pragmatic approach in *Atlas 360*. In that matter, a sales executive resigned to join a competitor after emailing herself customer lists and confidential business information. She had extensive knowledge of the employer's customers, pricing and commercial strategies. The court had little difficulty finding that the employer possessed protectable interests in the form of confidential information and customer connections. The risk that the information could be used by a competitor was both obvious and immediate. The restraint was therefore enforced. As restraint cases go, *Atlas 360* illustrates a point that courts routinely emphasise: copying customer lists before joining a competitor is rarely a strategically good idea.

HR & Skills Market v Strydom highlights another principle that employers sometimes overlook – employees may not compete with their employer while still employed. In that case, an HR consultant operated a competing business while working for the employer and serviced clients using confidential pricing structures and client information.

The court held that this conduct breached both the restraint provisions and the employee's common-law duty of loyalty. The employer had a clear protectable interest in its client relationships and confidential information, and the risk of misuse was real rather than speculative.

Finally, the High Court decision in *Corporate Business Solutions v Kenton* dealt with the misuse of employer information after termination of employment. The employee had access to product information, customer details, contract information and other commercially sensitive material. After leaving, he established a competing business and began soliciting the employer's clients. The court found that the employer's confidential information and customer relationships constituted protectable interests. The solicitation of clients in competition with the employer amounted to a clear breach of the restraint, and enforcement followed.

Viewed together, these decisions reflect a consistent judicial approach. First, restraints remain enforceable where they protect legitimate interests such as confidential information, trade secrets and customer connections. Second, the conduct of the employee often becomes decisive. Soliciting clients, copying confidential data, operating a competing business during employment or attempting to recruit colleagues will invariably strengthen the employer's case. Third, careful drafting matters. In *Backsports* and *Corporate Business Solutions*, the fact that the restraint applied regardless of the reason for termination proved significant. Precision in drafting can close off many of the arguments employees routinely raise. Fourth, courts will continue to balance the employer's interests against the employee's right to earn a livelihood. But where the employee can still work in the industry without unfairly exploiting the former employer's confidential information or customer relationships, enforcement will generally follow.

For employers, the lessons are straightforward. Restraints should be carefully drafted, directed at identifiable commercial interests and applied consistently. Where breaches arise, swift enforcement remains essential. For employees, the lesson is simpler still. You are free to take the job (as long as it doesn't compete). Just don't take the clients.



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