



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

SCA Case No: 1339/2025

In the matter between:

PIETER MARITZ

APPELLANT

and

TRUWORTHS LIMITED

RESPONDENT

Neutral Citation: *Pieter Maritz v Truworths Limited* (1339/2025) [2026]
[ZASCA 121] (22 September 2026)

Coram: MOLEFE, NORMAN, WINDELL JJA AND ZILWA AND
KOOVERJIE AJJA

Heard: 17 August 2026

Delivered: 22 September 2026

Summary: Contract law – enforcement of a restraint of trade covenant – civil procedure – whether a case for adducing further evidence is established – mootness – whether the appeal will have practical effect as envisaged in s 16(2)(a)(i) of the Superior Courts Act 10 of 2013 – two weeks before the expiry of the 12 months restraint period relied upon by the respondent – no discrete point of law – no issues of public importance that would affect matters in the future – appeal dismissed with costs.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Higgins AJ, sitting as court of first instance):

1 The application to lead further evidence is dismissed with costs, such costs to include costs of two counsel, where so employed.

2 The appeal is dismissed with costs, such costs to include costs of two counsel, where so employed.

JUDGMENT

Norman JA (Molefe, Windell JJA and Zilwa and Kooverjie AJJA concurring)

Introduction

[1] This appeal is against the order of the Western Cape Division of the High Court (high court), per Higgins AJ, enforcing a restraint of trade agreement (restraint), and granting a final interdict prohibiting the appellant, Mr Pieter Maritz, from assuming employment with Tymebank Limited (Tymebank), a competitor of Truworths Limited (Truworths) or any of its subsidiary or associated entities, or any other direct or indirect competitor of Truworths, for a period of 12 months. The high court also interdicted the appellant from directly or indirectly divulging or disclosing to any other person any of Truworths' trade secrets or confidential information. The appellant is before this Court with the leave of the high court. The issue of mootness is dispositive of this appeal.

[2] The restraint was concluded on 15 January 2015, when the appellant assumed employment with the respondent, Truworths. The appellant commenced employment with Tyme Pte Ltd on 2 September 2025. The restraint order is about to expire, rendering the appeal potentially moot.

Background

[3] Truworths is a leading South African fashion retailer and a registered financial service provider. It offers customers a range of credit products, including a buy-now-pay later (BNPL) facility known as ‘Pay 3’, which is unique in the market and highly profitable to Truworths. The Foschini Group Limited (TFG) is one of the largest and direct competitors of Truworths. TFG and TymeBank are strategic partners, with Tyme Bank offering credit to TFG’s customers, including ‘MoreTyme’, its BNPL product. MoreTyme is specifically designed to serve customers who do not qualify for the traditional credit facility product.

[4] Truworths has highly valuable proprietary and confidential information regarding the targeting and onboarding of high-risk customers. Truworths conceded that TymeBank does not presently operate within this segment of the market, but contended that the information it might obtain from the appellant would enable its expansion into this higher risk market, to the prejudice of Truworths.

[5] The appellant’s work with Truworths focused on the development of scorecards, customer strategy and analytics. His responsibilities included management of the credit portfolio, customer engagement strategy, credit marketing, collections strategy, vendor management, and credit provisioning. These objectives were achieved through the application of complex mathematical frameworks, models, and scorecards designed to optimise profitability. He

developed confidential predictive models for Truworths to assess the likelihood of customers meeting their repayment obligations. He was instrumental in the development of Pay 3, which has undergone continuous refinement since 2021 with his significant involvement and input.

[6] For reasons that shall become apparent later in this judgment, it is not necessary to refer to the relevant clauses of the restraint. It is common cause that the appellant was compensated for the restraint. He initially occupied the position of Senior Risk Analyst and was later appointed as Executive: Risk and Analytics. Having worked for Truworths for ten years, the appellant resigned on 1 May 2025, and served a four-month notice period, which expired on 31 August 2025.

[7] Prior to the expiry of the notice period, and during July 2025, Truworths contended that the appellant had failed to disclose his future employment intentions upon his resignation. On 28 July 2025, he disclosed to his immediate supervisor, Mr Gary Barnard (Mr Barnard), that he had been offered and had accepted a position with Tymebank. This was vehemently denied by the appellant. In an attempt to allay the concerns that Truworths had, the appellant gave a written undertaking that he will honour the restraint. Truworths was not satisfied with the undertaking. Consequently, it approached the high court and obtained the final interdict mentioned above.

[8] The restraint proceedings were the subject of further litigation in terms of ss 18(3) and 18(4)(ii) of the Superior Courts Act 10 of 2013 (the Act). The litigation concerned an application for the enforcement of the order pending appeal, which was granted, and an automatic appeal against that order before the full court, constituted by Mangcu-Lockwood and Lekhuleni JJ and Davis AJ. On 24 October 2025, the full court suspended the operation of certain provisions of the restraint order pending final determination of all present and future

applications for leave to appeal and appeals. It further ordered that the operation and execution of those provisions of the restraint order relating to non-disclosure of confidential information and trade secrets shall remain operative. The judgment of the full court is not the subject of this appeal.

[9] The appellant maintained that Truworths' concerns were speculative in nature. He argued that those concerns had been sufficiently addressed through an amended undertaking, whereby he undertook not to participate in any BNPL or consumer-credit activities in South Africa and to preserve the confidentiality of Truworths' proprietary information. He further disputed that Tyme Pte Ltd, his employer, was a competitor of Truworths, contending that the respective entities operated in materially different markets, served different customer segments, and offered distinct products and services. He also disputed that TymeBank was his employer and argued that Truworths had not made out a case for the restraint order.

Parties' submissions

[10] The appellant submitted that the high court had granted relief that extended beyond both the terms of the restraint and the case advanced in the founding affidavit. He contended that it erred in restraining him from taking up employment with entities that were neither shown to be competitors of Truworths nor within the ambit of the restraint undertaking. He further submitted that the high court failed to appreciate that there were material disputes of fact and determined the matter in a manner inconsistent with the Plascon-Evans rule. According to the appellant, Truworths failed to establish the existence of a protectable proprietary interest warranting enforcement of the restraint. He also argued that the high court failed to undertake the requisite balancing or proportionality enquiry. Finally, he contended that the restraint order was

unreasonably wide and unenforceable on the facts. He submitted that the appeal should be upheld with costs.

[11] Truworths, on the other hand, contended that it sought to enforce a 12-month restraint of trade, for which the appellant was compensated. It maintained that the restraint was necessary to protect its confidential information, proprietary credit-analytics methodologies, trade secrets, and specialised know-how. The appellant occupied a senior executive position within its credit analytics division and played a significant role in the development and implementation of one of its flagship BNPL credit products. During the course of his employment, the appellant acquired extensive knowledge of Truworths' proprietary models, datasets, credit-risk assessments, and strategic business processes.

[12] TymeBank competes with Truworths both directly and indirectly, including through strategic partnerships involving the Foschini Group and Pick n Pay. TymeBank offers a BNPL product that competes in the same market segment. The contention by the appellant that his employment was with Tyme Pte Ltd, rather than TymeBank, was raised belatedly and is not supported by the objective evidence. The appellant, in completing his termination documentation, identified TymeBank as his prospective employer. Even if Tyme Pte Ltd is accepted as Mr Maritz's employer, his involvement with or interest in TymeBank would nonetheless fall within the ambit of the restraint and constitute a breach thereof. Tyme Pte Ltd provides services to TymeBank, thereby creating a sufficient *nexus* between the two entities for purposes of the restraint undertaking.

[13] Truworths further submitted that the appellant's alleged employment with Tyme Pte Ltd was a ruse intended to mislead the court. Its case was that TymeBank, its direct competitor, was the appellant's true employer. It contended that Tyme Pte Ltd and TymeBank were closely associated and both compete with

Truworths. Any employment within the TymeGroup of companies would breach the restraint. In support of its case, it relied on, among other things, a termination form completed by the appellant reflecting TymeBank as his new employer; TymeBank's annual financial statements; a website showing TymeGroup executives and their roles, including, among others, Mr Jwili, a company secretary of TymeBank, and Mr Sorour, TymeBanks' Chief Risk Officer.

[14] The appellant maintained that, on 2 September 2025, he commenced employment with Tyme Pte Ltd, a subsidiary of the TymeGroup that provides short-term financing to SMEs. Before dealing with the matters raised by the parties, I turn to the application made by Truworths to adduce further evidence on appeal.

Application to adduce further evidence on appeal

[15] Truworths seeks an order to adduce evidence that it contends could not have been obtained prior to it lodging the restraint application before the high court. I am alive to the fact that this application relates to the merits, but it is convenient and prudent to dispose of it at this stage for the following reasons. First, it was brought before us on appeal and has not served before any other court. Second, it is only this Court that can determine it. Third, the correspondence attached to the application has a direct bearing on the mootness point, which I will deal with next.

[16] The evidence relates to a screenshot of a post published on LinkedIn (the post) by the appellant's attorneys of record, as well as, correspondence concerning the expedited hearing of the appeal. The post reads:

'We are pleased to have successfully represented Mr Pieter Maritz, on behalf of our client, TymeBank Limited, in his appeal against Truworths Limited. The full bench of the Western Cape Division of the High Court found that the original restraint -of -trade order was overbroad

and unfair, limiting its enforceability to the protection of trade secrets only. Congratulations to Mr Maritz and our Employment Law team on this significant, precedent – setting victory.’

[17] Truworths contended that this information demonstrated that TymeBank was funding the litigation on behalf of the appellant and had an interest in the matter as his true employer. The correspondence attached relates to letters sent to the Chief Registrar requesting an urgent appeal hearing by Truworths and the appellant’s response was that there were no extenuating circumstances justifying the expedited hearing of the matter. However, the appellant indicated that he would abide this Court’s decision.

[18] The appellant opposed the application on the basis that he did not author or publish the post, and was not consulted prior to its publication. The original post referred to TymeBank as his employer, and he brought that to the attention of his attorneys and sought a correction of that error. In the correction, only the word ‘employer’ was removed. The fact that TymeBank remained in the post was the result of a misunderstanding on the part of his attorneys of record. He contended that the evidence was not material, as it corroborated a case already fully made and ventilated by Truworths. It could not change the result because it did not establish that TymeBank was his employer. The identity of his employer was what was disputed, a fact which fell to be determined on his version and not by reference to the identity of the funder.

Discussion

[19] Truworths must satisfy the criteria set out in s 19(b) of the Act. It must show that the evidence could not, with reasonable diligence, have been obtained for use at the hearing before the high court, that it is material, and that it could

change the result. In *P A F v S C F*,¹ this Court faced with a similar application, stated:

‘Section 19 (b) of the Superior Courts Act, empowers this Court to “receive further evidence”. In *Colman v Dunbar* 1933 AD 141 (A) at 161-163, this Court said that the relevant criteria as to whether evidence should be admitted on appeal are: the need for finality, the undesirability of permitting a litigant who has been remiss in bringing forth evidence, to produce it late in the day, and the need to avoid prejudice. This was approved by [the Constitutional Court] in *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others* [2004] ZACC 20; 2005 (2) SA 359 (CC); (2005) BCLR 301 paras 41-43. Referring to s 22 of the repealed Supreme Court Act 59 of 1959, which is similar to s 19(b) of the Superior Courts Act, the court cautioned that the power to receive further evidence on appeal should be exercised “sparingly” and that such evidence should only be admitted in “exceptional circumstances”.’

[20] The post was not authored by the appellant, therefore, its veracity does not depend on him. To the extent that Truworths relied on it as evidence that the appellant was employed by TymeBank, it also placed in dispute the contents of the affidavit of Ms Sayi Nindi, a director at Malatji & Co Attorneys, the appellant’s legal representatives, who confirmed the appellant’s evidence in relation to the post. By so doing, Truworths pursues a dispute that already exists between the parties. In short, the evidence sought to be introduced does not resolve the issue that is the subject of appeal. Instead, it frustrates the finality of the proceedings by adding further disputes such as: who drafted the post, what is meant by an ‘internal misunderstanding’, and why the post contained errors.

[21] Section 19(b) of the Act does not contemplate an elongation of the dispute that already serves on appeal. The evidence sought to be introduced is not credible, weighty, and material so as to probably change the result. In *O’Shea NO*

¹ *P A F v S C F* [2022] ZASCA 101; 2022 (6) SA 162 (SCA) para 9. See also *BP Southern Africa (Pty) Ltd v Commissioner, South African Revenue Service* [2024] ZASCA 2; 2025 (4) SA 59 (SCA); 87 SATC 34 para 24.

v Van Zyl NO and Others NNO,² this Court considered that one of the criteria for the late admission of the new evidence is that such evidence will be ‘... practically conclusive and final in its effect on the issue to which it is directed’. The post is no such evidence. It follows that the application must fail with costs.

Is the appeal moot?

[22] The issue of mootness featured prominently in the s 19(b) application. It was addressed in argument by both parties. A reference to their affidavits in the s 19(b) application puts it beyond doubt that both parties were alive to the fact that mootness posed an insurmountable obstacle to this Court exercising its discretion in favour of deciding the merits. Truworths stated in the replying affidavit filed in the application to lead further evidence that a proportionate 12-month restraint is liable to be defeated by the mere effluxion of time if the appeal follows the ordinary course. It recognized that there was a risk that the restraint order, even if upheld on appeal, would be a ‘vacuous gesture’.

[23] Counsel for the appellant also acknowledged that, if the appeal could not be determined before 31 August 2026, ‘it would have no practical effect’ and that ‘this Court ordinarily declines to determine matters that have become academic’. Counsel argued, however, that at the time the appeal was heard, it was not moot.

[24] Mootness is regulated by the provisions of s 16(2)(a)(i) of the Act. Section 16(2)(a) of the Act, provides as follows:

‘(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

² *O’Shea NO v Van Zyl NO and Others NNO* [2011] ZASCA 156; 2012 (1) SA 90 (SCA); [2012] 1 All SA 303 (SCA) para 9. Dictum applied in *KGA Life Ltd v Multisure Corporation (Pty) Ltd and Others* [2023] ZASCA 122; 2024 (3) SA 51 (SCA); [2023] 4 All SA 613 (SCA) para 9; *KSL v AL* [2024] ZASCA 96; 2024 (6) SA 410 (SCA) para 13.

(ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.’

[25] The appellant, in addressing this point, submitted that, even if this Court were of the view that the matter is moot, it should exercise its discretion and decide the matter on the merits because the restraint order had been found to be unfair in the s 18(4) proceedings. Furthermore, the appellant submitted that he had been ordered to pay costs of the restraint application and should not be burdened with such an order.

[26] Counsel for Truworths, on the other hand, submitted that, if the matter is moot and there were no issues of public interest, the appeal should be dismissed on mootness and the appellant be ordered to pay costs.

[27] In *The Laser Transport Group v Elliot Mobility (Pty) Ltd*,³ this Court, in anticipation of the appeal hearing, invited the parties to make submissions on whether any decision in the appeal would have any practical effect as contemplated in s 16(2)(a)(i) of the Act. The reason for the invitation was that the four-year contract concluded with the respondents in 2015 was to expire three months after the date of the hearing of the appeal. The appeal was dismissed on mootness.

[28] This matter was heard on 17 August 2026. The appellant’s restraint period will end on 31 August 2026, one year after the appellant’s last day of employment with Truworths. At the time of the hearing, the restraint had only two weeks left to run. The considerations of whether an appeal is moot is not determined based

³ *The Laser Transport Group (Pty) Ltd and Another v Elliot Mobility (Pty) Ltd and Another* (835/2018) [2019] ZASCA 140; 2019 JDR 2520 (SCA) para 15.

on the date of hearing but on whether the order to be made on appeal will have practical effect, a point I now turn to.

[29] The operation of the restraint order was suspended, save for paragraph 1.3. of the high court order. That order, by its very nature, operates in perpetuity because there will never be a time when the appellant is permitted, directly or indirectly, to divulge or disclose to any other person any of the trade secrets and know-how of Truworths as defined in clause 3.1.4 of the restraint.

[30] In argument, the appellant conceded that the restraint was valid, that Truworths possessed confidential information, and that appellant remained bound by it. Those concessions had the effect of accepting paragraph 1.3 and its operation.

[31] The remainder of the interdictory relief was suspended. As a result, the appellant took up employment with Tyme Pte Ltd on 2 September 2025 and will complete one year of employment on 2 September 2026.

[32] It is important to consider the nature of the order that was sought and granted against the appellant. It was a final interdict intended to restrain and interdict the appellant from assuming employment with Tymbank or any holding, subsidiary, or associated entity, or any other direct or indirect competitor of Truworths. With the appellant having assumed employment with Tyme Pte Ltd, the purpose of the interdictory relief was rendered obsolete and ineffective.

[33] On the parties' own submissions, it is apparent that there is a factual dispute, namely, who the appellant's true employer is and whether that employer is a competitor of Truworths. The resolution of that issue does not depend on the

law but is fact-based. A disputed factual issue does not equate to a discrete legal issue of public importance.

[34] In *Centre for Child Law v The Governing Body of Hoërskool Fochville*,⁴ this Court, when dealing with the exercise of its discretion in cases of mootness, reviewed previous cases and found that the class of case in which this Court considered the merits of an appeal, despite its mootness, was where ‘... a discrete legal issue of public importance arose that would affect matters in the future and on which the adjudication of this Court was required ...’. This is not such a case.

[35] ‘A matter is moot when the order sought will have no practical effect on the parties – because there is no longer an existing or live controversy between them’.⁵ Courts are required to refrain from making a ruling in such matters, because the ruling will amount to a mere advisory opinion, which is abstract or academic and of no practical effect.⁶

[36] The matter is not of public importance because the restraint is between the appellant and Truworhs. It is based purely on their employment contract-relationship. It does not implicate the public interest at all.

⁴ *Centre for Child Law v The Governing Body of Hoërskool Fochville and Another* [2015] ZASCA 155; [2015] 4 All SA 571 (SCA); 2016 (2) SA 121 (SCA) para 11. Dictum applied in *A B and Another v Pridwin Preparatory School and Other* [2020] ZACC 12; 2020 (9) BCLR 1029 (CC); 2020 (5) SA 327 (CC) para 114. See also *Public Protector v Chairperson, Section 194(1) Committee and Others* [2024] ZASCA 131; [2024] 4 All SA 693 (SCA); 2025 (4) SA 428 (SCA) para 31.

⁵ *Aptitude Trading Enterprise (Pty) Ltd v The City of Tshwane Metropolitan Municipality and Another* (251/2024) [2025] ZASCA 72; 2025 JDR 2395 (SCA) (30 May 2025) para 13. *A B and Another v Pridwin Preparatory School and Other* [2020] ZACC 12; 2020 (9) BCLR 1029 (CC); 2020 (5) SA 327 (CC) para 50 (*Pridwin*).

⁶ *Ibid* para 13. See also *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1; 2000 (1) BCLR 39 (CC) para 21 (*National Coalition for Gay and Lesbian Equality*). *Police and Prisons Civil Rights Union v South African Correctional Services Workers’ Union and Others* [2018] ZACC 24; [2018] 11 BLLR 1035; 2018 (11) BCLR 1411; (2018) 39 ILJ 2646; 2019 (1) SA 73 (CC) para 43 (*Police and Prisons Civil Rights Union*). *President of the Republic of South Africa v Democratic Alliance and Others* [2019] ZACC 35; 2019 (11) BCLR 1403; 2020 (1) SA 428 (CC) para 35 (*Democratic Alliance*).

[37] The restraint was for an immutable period of 12 months, as agreed by the parties. That period does not change simply because there is an appeal. On the facts, there will be no practical purpose served by this Court deciding the merits of the appeal. We accordingly refuse to exercise our discretion to determine the merits. There are no exceptional circumstances warranting the exercise of the Court's jurisdiction in terms of s 16(2)(a)(ii) of the Act. It follows that the appeal must fail based on mootness.

Costs

[38] On the issue of costs, the following factors are relevant. Truworths requested a preferential date from the Chief Registrar of this Court. The appellant did not support that request. Instead, his attorneys stated:

'In as far as this request is concerned, we are of the view that the respondent has failed to make out a case for an urgent appeal hearing. There are no extenuating circumstances justifying the expeditious hearing of this matter. Consequently, we submit that this matter should be set down in the normal course. With that said, the appellant will abide by the court's decision.'

[39] The issue of mootness was raised frontally in the s 19(b) application, and the appellant in fact acknowledged that an order on appeal will have no practical effect. Notwithstanding such concession, he persisted in contending that this Court should deal with the matter. For all the above-mentioned reasons, the appellant must bear the costs of this appeal, including the costs of two counsel, where so employed.

[40] In the result the following order is made:

1 The application to lead further evidence is dismissed with costs, such costs to include costs of two counsel, where so employed.

2 The appeal is dismissed with costs, such costs to include costs of two counsel, where so employed.

T V NORMAN
JUDGE OF APPEAL

Appearances

For the appellant: M Scheppers

Instructed by: Malatji & CO Attorneys, Sandton
c/o Honey Attorneys, Bloemfontein

For the Respondent: A R Sholto-Douglas SC with M Maddison

Instructed by: Ward Brink Attorneys, Cape town
c/o Phatsoane Henney Attorneys, Bloemfontein.