



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Not Reportable

Case no: 1192/2022

In the matter between:

LEAD HV (PTY) LTD

FIRST APPELLANT

BARRY LOMBAARD

SECOND APPELLANT

and

HV TEST (PTY) LTD

RESPONDENT

Neutral citation: *Lead HV (Pty) Ltd and Another v HV Test (Pty) Ltd* (1192/2022)
[2024] ZASCA 36 (2 April 2024)

Coram: Ponnann, Mbatha and Goosen JJA and Coppin and Tolmay AJJA

Heard: 11 March 2024

Delivered: 2 April 2024

Summary: Appeal against grant of a final interdict – concerns factual findings – no basis for interference and due to effluxion of time – appeal moot.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Ternent J, sitting as court of first instance):

1 The appeal is dismissed.

JUDGMENT

Tolmay AJA (Ponnan, Mbatha and Goosen JJA and Coppin AJA concurring):

[1] This is an appeal, with the leave of this Court, against the grant of a final interdict by the Gauteng Division of the High Court, Johannesburg (per Ternent J) (the high court). Lead HV (Pty) Ltd (the first appellant) and HV Test (Pty) Ltd (the respondent) are both suppliers of goods and services in the medium, high and extra high voltage electrical engineering field and are in direct competition with each other. Mr Lombaard (the second appellant) is the general manager of the first appellant. During 2020 two of the respondent's former employees, Ms Sheik (Sheik) and Mr Ledwaba (Ledwaba), who were subject to a restraint of trade agreement with the respondent, obtained employment with the first appellant.

[2] An Anton Piller interdict was obtained against Sheik, Ledwaba and the appellants on 10 September 2020 and confidential information that belonged to the respondent was found in possession of Sheik and Ledwaba. The respondent alleged that they provided the appellants with this information in breach of the restraint of trade. The respondent said this information was used to advance the business of the appellants to the detriment of the respondent.

[3] This prompted the respondent to launch an urgent application against the appellants, Sheik and Ledwaba, seeking an interdict to prevent them from dealing with its confidential information, approaching its clients and/or disclosing the identities of any party with whom the confidential information may have been shared. The respondent also sought to enforce the restraint of trade against Ledwaba and Sheik. Only the appellants opposed the urgent application. An order was granted by default against Sheik and Ledwaba on 13 November 2020. The application against the appellants was struck from the urgent roll for want of urgency.

[4] The matter against the appellants thereafter proceeded in the ordinary course and was ultimately heard on 14 April 2021 in the opposed motion court. On 12 August 2021, a final interdict was granted restraining the appellants from utilizing the confidential information of the respondent.¹

¹ The order that issued reads:

102.1 The first and fourth respondents are interdicted and/or restrained from:

102.1.1 utilising, communicating or publicising any of the applicant's confidential information comprising of the applicant's:

(a) customer lists;

(b) training lists; and

(c) follow quotes lists,

("the confidential information");

102.1.2 utilising or publicising customer contact details of persons with whom the applicant deals;

102.1.3 approaching directly or indirectly (or assisting any other person in approaching directly or indirectly, any customer or employee of the applicant in order to unlawfully compete with the applicant, for their benefit or the benefit of any other person in respect of any contract with which the applicant has tendered, bid or was negotiating at any time up to and including 13 November 2020;

102.1.4 accessing or utilising the confidential information which has come into their possession in consequence of their employment of the second and third respondents.

102.2 Ordering Lead HV to disclose, with sufficient particularity, the details of any person, close corporation, company or partnership with whom they have attempted or have conducted business utilising the confidential information.

102.3 Ordering the first and fourth respondents to dispose, delete and destroy the applicant's confidential information, however stored, and to inform the app that they have done so within 10 (ten) days of this order.

102.4 Ordering the first and fourth respondents to pay the costs of this application on the attorney and client scale, jointly and severally, the one paying the other to be absolved.'

[5] It is unclear why leave to appeal was granted to this Court. The facts reveal that Ledwaba and Sheik, who were under a restraint of trade, were in possession of information that they were not at liberty to have or use. They took up employment with the appellants, who were direct competitors of the respondent. It cannot be said that the high court misdirected itself on the facts or the law, and as counsel was constrained to concede no basis exists for interference by this Court on appeal.

[6] This should be the end of the matter, but the appellant faces a further insurmountable obstacle, namely whether there still exists a live dispute between the parties on appeal. The relevant incidents occurred during 2020 and the order was granted during August 2021. Whatever harm was done to the respondent and whatever rights the appellants still seek to protect have become academic due to the effluxion of time. The proverbial horse has bolted. Courts exist to determine live disputes and ‘. . . will not adjudicate an appeal if it no longer presents an existing or live controversy’.² Once again as counsel was forced to accept, there no longer exists any live dispute as between the parties.

[7] In the result, appeal is dismissed.

R G TOLMAY
ACTING JUDGE OF APPEAL

² *Police and Prisons Civil Rights Union v South African Correctional Services Workers' Union and Others* [2018] ZACC 24; [2018] 11 BLLR 1035 (CC); 2018 (11) BCLR 1411 (CC); (2018) 39 ILJ 2646 (CC); 2019 (1) SA 73 (CC) para 43. See also *Minister of Tourism and Others v Afriforum NPC and Another* [2023] ZACC 7; 2023 (6) BCLR 752 (CC) para 23.

Appearances

For appellants:	J Vorster
Instructed by:	L A Stuart Inc. Attorneys, Pretoria Van der Berg Van Vuuren Attorneys, Bloemfontein
For respondent:	A W Pullinger
Instructed by:	Van Zyl Johnson Inc., Johannesburg Kramer Weihmann Attorneys, Bloemfontein