Zulu Nyala Game Ranch (Pty) Limited v Beukes and Another (2025-174684) [2025] ZAKZDHC 87 (10 December 2025)

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: 2025-174684

In the matter between:

ZULU NYALA GAME RANCH (PTY) LIMITED **APPLICANT**

and

CHRISTIAAN BEUKES **FIRST RESPONDENT**

CUSTOM TRAILS (PTY) LIMITED **SECOND RESPONDENT**

ORDER

Accordingly, I make the following order:

1. The respondents are interdicted and restrained from using, distributing, copying or publishing any confidential information of the applicant and personal information, as defined in the Protection of Personal Information Act 4 of 2013 ('the Act'), of the applicant's existing customers in any manner, either directly or indirectly, for any purpose, including the solicitation of business from such customers.

2. The respondents are interdicted and restrained from contacting, dealing with, securing or soliciting the business of the applicant's customers, including but not limited to social media platforms, either directly or indirectly, for any purpose whatsoever.

3. The respondents are directed to delete, remove and destroy all of the applicant's customers' personal information, as defined in the Act, and the data in the first respondent's possession from his electronic devices, including laptops, cellular phone(s), storage disks,

including hard disk drives, solid state drives, USB flash drives and micro disks, and tablets of any kind and any cloud storage service, including but not limited to Google Drive.

4. The respondents are directed to delete, remove and destroy all soft copies of the applicant's confidential information and documentation, as contemplated in clauses 11.9, 13.1, 19.1 and 22.1, respectively, of the first respondent's employment contract with the applicant, from the first respondent's electronic devices including laptops, cellular phones, storage disks (including hard disks drives, solid state drives, USB flash drives and micro disks) and tablets of any kind and any cloud storage service, including but not limited to Google Drive.

5. The respondents are directed to hand over to the applicant all hard copies of confidential information and documentation, as contemplated in clauses 11.9, 13.1, 19.1 and 22.1, respectively, of the first respondent's employment contract.

6. The respondents are to pay the costs of the application, jointly and severally, the one paying the other to be absolved, such costs to be taxed on scale B.

JUDGMENT

SAKS AJ:

[1] This application came before me as an urgent application in which the applicant sought to interdict the respondents from utilising confidential and/or personal information, as defined in the Protection of Personal Information Act 4 of 2013 ('the Act'). The applicant contended that the first respondent had accessed, possessed and was making use of such information pursuant to the termination of his employment with the applicant. It was common cause that the first respondent is presently employed by the second respondent.

[2] The respondents raised two points *in limine,* firstly that the application was not urgent and, secondly, that the application was bad for non-joinder. I deal with each of these *ad seriatim*.

[3] The parties argued the question of urgency and, in my view, the applicant made out a case that the matter was sufficiently urgent as contemplated in Uniform rule 6(12). In any event, any potential prejudice was ameliorated by the matter having been postponed on 6 October 2025 to facilitate the exchange of affidavits from the parties and the filing of heads of argument. Counsel for the respondent wisely did not pursue it any further.

[4] The second point *in limine* raised by the respondents was that it contended that the applicant had failed to cite the Information Regulator**[1]** and the data subjects referred to in paragraph 59 of the founding affidavit.**[2]**

[5] It is now settled law that the joinder of a party is only required as a matter of necessity, as opposed to a matter of convenience, if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned.**[3]** The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one.**[4]**

[6] I am not convinced that the data subjects would be affected by an Order granted by this Court. The data subjects would not be prevented from contacting the respondents. The relief sought is aimed at preventing the respondents from making use of the confidential and personal information to contact the data subjects themselves to solicit business. In the result, this point *in limine* must fail and is accordingly dismissed.

[7] I now turn to deal with the merits of the application.

[8] The applicant offers bespoke wildlife and cultural vacations to its customers. These vacations include accommodation and curated activities, which include offsite excursions ('excursions') available at an additional cost. The majority of the applicant's customers comprise of international guests, who for the most part, are return customers.

[9] The first respondent was employed by the applicant for 11 years as a ranger. He was responsible for marketing the excursions and game drives to customers upon their arrival. He would also accompany them on the excursions.

[10] On 22 July 2019, the second respondent was registered by the first respondent's wife, Lee Ann Beukes. During the course of executing his duties, the first respondent became privy to the applicant's confidential customer list and the customers' personal information, including their contact numbers, their personal preferences as well as the applicant's pricing structure. Specifically, customers gave the first respondent their contact details for the purposes of facilitating the excursions whilst they were guests of the applicant.

[11] The first respondent's employment contract contained confidentiality clauses that expressly prohibited him from disclosing, *inter alia,* trade secrets, marketing material, customer lists or supply lists, business affairs, technical methods, electronic mail and processes of the applicant's operations.**[5]**

[12] Clause 22.1 of the first respondent's employment contract clearly stipulated that upon the termination of his employment, he was immediately required to deliver to the applicant all security access cards, assets, equipment, records, documents, source code, accounts, letters, notes, software, memoranda and papers of every description within his possession or control relating to the applicant's affairs and business whether or not they were originally supplied by the applicant.**[6]**

[13] On 8 August 2025, the first respondent was dismissed from the applicant's employment after the applicant discovered, during or about July 2025, that the first respondent was selling the second respondent's excursions to the applicant's customers, whilst he was employed by the applicant and whilst the customers were guests of the applicant.

[14] Almost immediately after the first respondent's termination of employment, the second respondent secured a license on 24 August 2025, to permit it to conduct business as a safari vehicle operator, specifically for game drives, in Hluhluwe-iMfolozi Park, Mkuzi Game Reserve, Tembe/Ndumo Complex and Itala Game Reserve (collectively referred to as 'the reserves').**[7]**

[15] The second respondent's license allows it to offer excursions identical to those offered by the applicant within the same reserves, as is demonstrated by the applicant's excursion list.**[8]** The first respondent's license allows the second respondent to reserve accommodation for its customers in the reserves, which further expands the second respondent's service offering, to bring it into direct competition with the applicant.

[16] Fundamentally, there would be nothing untoward in the second respondent setting up a business in competition with the applicant; however, the applicant's complaint is that the first respondent has set about utilising the confidential and personal information of the applicant's customers in order to solicit business from the same customers, to springboard the second respondent's business into viability. The applicant argues that this amounts to unlawful competition.

[17] The applicant does not seek to enforce a restraint of trade against the first respondent, as no such clause is contained in the first respondent's employment contract. Instead, it seeks to enforce the confidentiality provisions contained in the employment contract, which survive the termination of the first respondent's employment.

[18] In addition, the applicant seeks to invoke the provisions of the Act, in that the first respondent has disclosed what the applicant contends is confidential and personal information to a third party, namely the second respondent. It is now trite that in order to qualify as confidential information, the information concerned must fall within the following three requirements, namely:

(a) Firstly, the information must not only relate to, but also be capable of application in the particular trade or industry.

(b) Secondly, the information must be secret or confidential. To that end, the information must, objectively, only be available and thus known, to a restricted number of people or to a closed circle, or, as it is usually expressed by the courts, the information must be something which is not public property or public knowledge.

(c) Thirdly, the information must, likewise objectively viewed, be of economic (business) value to the applicant.**[9]**

[19] The second string to the applicant's bow lies in s 20 of the Act, which imposes a statutory obligation on it to treat personal information which comes to their knowledge as confidential and must not disclose it.**[10]**

[20] The Act defines 'personal information' as information relating to an identifiable, living, natural person, and where applicable, an identifiable existing juristic person. This includes, *inter alia*, their e-mail address, physical address, telephone number, location information, online details or other particular assignment to the person;**[11]** the personal preferences of the person,**[12]** the name of the person, if it appears, personal information relating to the person or if the disclosure of the name itself would reveal information about the person.**[13]**

[21] It must, therefore, be accepted that the data which forms the subject of this application falls within the definition of personal information in the Act. Mr *Randles* who appeared on behalf of the respondents sought to distinguish personal information from confidential information and to that end contended that whilst the data in question constituted personal information, it did not constitute confidential information for the purposes of the prohibition contained in the first respondent's contract of employment.

[22] Whilst the respondents may have sought shelter in the distinction contended for, it is a distinction of no significance, in that s 20 of the Act required the applicant, *qua* operator, or as an entity which processes personal information on behalf of a responsible party or operator, to treat such personal information as confidential and is obliged to ensure that it is not disclosed to third parties. For the sake of good order, I find that the information is confidential and therefore subject to the relevant provisions of the employment contract, which survived its termination.

[23] It is common cause that this information has been disclosed to a third party, namely the second respondent. However, that is not the end of the matter, because the applicant is not only seeking to prevent the First Respondent from disclosing such information but it is additionally seeking to interdict the second respondent from contacting its customers. Accordingly, it must meet the threshold by

establishing that the acquisition and use of the applicant's trade secret is likely to cause the applicant loss of custom, thereby, in principle, infringing his right to goodwill, in this instance the right to carry on its trade and attract customers.

[24] The leading decision is *Dun and Bradstreet (Pty) Limited v SA Merchants Combined Credit Bureau (Cape) Pty Limited***[14]** where Corbett J held:

'...where, as in this case, a trader has by the exercise of his skill and labour compiled information which he distributes to his client upon a confidential basis (i.e. upon the basis that the information should not be disclosed to others), a rival trader who is not a client but in some manner obtains this information and, well knowing its nature and the basis upon which it was distributed, uses it in his competing business and thereby injured the first mentioned trader in his business, commits a wrongful act *vis-à-vis* the latter and will be liable to him in damages. In an appropriate case the plaintiff trader would also be entitled to claim an interdict against the continuation of such wrongful conduct.'

[25] Unlawfulness is determined by reference to the *boni mores* yardstick.**[15]** The acquisition and use of a competitor's confidential information is in principle *contra bonos mores* and, consequently, also *prima facie* unlawful if an infringement of an applicant's goodwill is likely.**[16]** In these circumstances, a prejudiced creditor is entitled to move for an interdict,**[17]** independent from a claim for damages under the *actio legis Aquiliae.* An interdict does not require the establishment of fault**[18]** or damage, the unlawfulness of the conduct is sufficient.**[19]**

[26] The springboard doctrine in English law, which has been adopted in our law,**[20]** must also be taken into account. The basic philosophy of this doctrine is that the competitor who acquires the plaintiff's trade secret and uses it in his performance, has an unfair and improper head start or springboard enabling him to take advantage of the plaintiff. That certainly appears to be the case here as the information or data that is the subject of the application will be used to springboard the second respondent's business and give it a head start at the expense of the applicant.

[27] Mr *Randles* conceded that the second respondent could have not obtained the confidential or personal information in question without that data having being disclosed by the first respondent pursuant to the termination of his employment with the applicant. The

information was, therefore, not in the public domain nor could the second respondent obtain such information by searching for it on the internet. These customers, I was advised, are all international guests, and the customer list that has been built up over time by the applicant could never have become public knowledge or fall within the knowledge of the second respondent without such a disclosure, which would have been in breach of the first respondent's contract of employment.

[28] I now turn to deal with the three requirements. The first requirement is that the information must not only relate to, but also be capable of application in the particular trade or industry.**[21]** The nature of the applicant's business is such that the information allows them to provide the bespoke service which it believes sets them apart from other companies. That database allows them to provide a high level service knowing full well the preferences and details of its customers, which it uses to market business from time to time. Furthermore, that information was similarly to be used by the second respondent and there can hardly be any argument to the contrary in that regard. Accordingly, the information is capable of being used in the particular industry.

[29] The second requirement is that the information must be secret or confidential and so the data or information must, objectively determined, only be available or known to a restricted number of people or closed circle, which is not public property or public knowledge. **[22]** The respondents did not attempt to argue that the information in question was a matter of public knowledge or public property. Objectively speaking, this information fell peculiarly within the knowledge of the applicant and its employees. The data comprised international customers and their contact details, preferences and the like, which remained solely within the domain of the applicant and its business. Its game rangers would have these contact details on their cellular phones or laptops for the purposes of being able to liaise with such customers for the purposes of offering and facilitating the excursions. Accordingly, such information, which constitutes personal information under the Act, also constitutes confidential information or at the very least information that the applicant was bound to treat as confidential, having regard to the provisions of s 20 of the Act and the terms of his employment contract, respectively. Accordingly, the applicant has satisfied the second leg of the test.

[30] Thirdly, the data must, objectively viewed, be of economic or business value to the applicant. This is certainly the case as the applicant's entire business model is predicated upon offering a bespoke service to such customers who intend to frequent the reserves. It is vital to the applicant's business. It, therefore, has an economic or business value in the circumstances and this satisfies the third leg of the test.

[31] In the result, I find that the applicant has satisfied the test and such information must be considered a trade secret, quite apart from such information constituting personal information under the Act.

[32] The applicant's counsel directed my attention to the case of *Van Castricum v Theunissen & Another,***[23]** as being one which is remarkably similar to the extant matter. Much like this matter, the first respondent in *Van Castricum***[24]** was not bound by a restraint of trade clause in a contract of employment and, secondly, the case considered the disclosure of confidential information. Much like *Van Castricum*,**[25]** the applicant's business is greatly dependant on the confidential information relating to clients.**[26]**

[33] Regarding confidentially in general and client lists in particular, the court in *Van Castricum***[27]** referred to the following dicta in the English case of *Printers and Finishers Ltd v Holloway:***[28]**

'The mere fact that the confidential information is not embodied in a document but is carried away by the employee in his head is not, of course, of itself a reason against the granting of an injunction to prevent its use or disclosure by him. If the information in question can fairly be regarded as a separate part of the employee's stock of knowledge which a man of ordinary and honest intelligence would recognise to be the property of his own employer, and not his own to do as he likes with, then the court, if it thinks that there is a danger of the information being used or disclosed by the ex-employee to the detriment of the old employer, will what it can to prevent that result by granting an injunction.'

[34] The court also referred to the early decision of *Robb v Green***[29]** where Lord Justice Kaye held that:

'It is enough for that purpose to say that where we find a servant using after he has left his employment, a document surreptitiously compiled from his Master's book to the detriment of the Master, he is in breach of trust, if not in breach of contract.'

[35] It was then held that in that case that the employer was entitled to an interdict and damages.

[36] This case is decidedly similar to *Van Castricum***[30]** (if one considers the physical client list data on the Bantex list as being similar to modern-day electronic equipment, such as servers or hard drives on phones and laptops) and I am, furthermore, in agreement with the dicta quoted above.

[37] It is, however, necessary to clarify the relief that may be granted. The applicant is entitled to an interdict not for the enforcement of a restraint of trade preventing the first respondent from taking up employment in the industry, but the interdict lies against the use of the information in question.

[38] Put simply, the respondents are to be interdicted and restrained from contacting the applicant's clients. The first respondent is entitled to remain in the employment of the second respondent. Finally, Ms *Schulenburg*, who appeared for the applicant, correctly conceded that the applicant cannot prevent such clients from contacting the respondents. It is the soliciting of business by the respondents from such clients that forms the basis of the interdict.

Costs

[39] The general rule is that costs follow the result, however, the applicant seeks punitive costs in the circumstances. The first respondent clearly believed that he was entitled to act as he did. Furthermore, the applicant chose not to institute an Anton Piller application, which may have established the *mala fides* it now contends was at the heart of the respondents' actions. I am, therefore, disinclined to award punitive costs in this instance.

Order

[40] In the circumstances, I make the following Order:

1. The respondents are interdicted and restrained from using, distributing, copying or publishing any confidential information of the applicant and personal information, as defined in the Protection of Personal Information Act 4 of 2013 ('the Act'), of the applicant's existing customers in any manner, either directly or indirectly, for any purpose, including the solicitation of business from such customers.

2. The respondents are interdicted and restrained from contacting, dealing with, securing or soliciting the business of the applicant's customers, including but not limited to social media platforms, either directly or indirectly, for any purpose whatsoever.

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4. The respondents are directed to delete, remove and destroy all soft copies of the applicant's confidential information and documentation, as contemplated in clauses 11.9, 13.1, 19.1 and 22.1, respectively, of the first respondent's employment contract with the applicant, from the first respondent's electronic devices including laptops, cellular phones, storage disks (including hard disks drives, solid state drives, USB flash drives and micro disks) and tablets of any kind and any cloud storage service, including but not limited to Google Drive.

5. The respondents are directed to hand over to the applicant all hard copies of confidential information and documentation, as contemplated in clauses 11.9, 13.1, 19.1 and 22.1, respectively, of the first respondent's employment contract.

6. The respondents are to pay the costs of the application, jointly and severally, the one paying the other to be absolved, such costs to be taxed on scale B.

D.J. SAKS AJ

Appearances:

For the Applicant: S. Schulenburg

Instructed by:	Hutcheon Attorneys, Bedfordview
	c/o Macgregor Erasmus Attorneys
For the Respondents:	G. Randles
Instructed by:	Van Niekerk Attorneys
	c/o Fourie Stott Attorneys
Date of Hearing:	17 October 2025
Date of Judgment:	10 December 2025

[1] Established in terms of s 39 of the Act.

[2] The applicant's customers in question are listed in para 59 of the founding affidavit.

[3] *Bowring NO v Vrededorp Properties CC and Another* **[2007] ZASCA 80**; **2007 (5) SA 391** (SCA) para 21. See also *Judicial Service Commission & Another v Cape Bar Council* **[2012] ZASCA 115**; **2013 (1) SA 170** (SCA) *(Judicial Service Commission)* para 12.

[4] *Burger v Rand Water Board and Another* **[2006] ZASCA 150**; **2007 (1) SA 30** (SCA) para 7; *Judicial Service Commission* para 12.

[5] See clause 19.1 of the employment contract, Annexure 'FA4'.

[6] See clause 22.1 of the employment contract.

[7] See annexure ‘CB1’.

[8] See annexure ‘RA2’.

[9] *Townsend Productions (Pty) Ltd v Leech & Others* **2001 (4) SA 33** (C) at 53I to 54B *(Townsend Productions)*. See also *Motion Transfer & Precision Roll Grinding CC v Carsten and Another* **[1998] 4 All SA 168** (N) at 175. See also Van Heerden and Neethling *Unlawful Competition* 2 ed (2008) at 225 (Van Heerden).

[10] Section 20 of the Act stipulates that: ‘An operator or anyone processing personal information on behalf of a responsible party or an operator, must –

(a) process such information only with the knowledge or authorisation of the responsible party; and

(b) treat personal information which comes to their knowledge as confidential and must not disclose it, unless required by law or in the course of the proper performance or their duties.’

[11] See s 1 of the Act regarding the definition of ‘*personal information’* subsec. *(c)*.

[12] Ibid subsec *(e)*.

[13] Ibid subsec *(h)*.

[14] *Dun and Bradstreet (Pty) Ltd v SA Merchants Combined Credit Bureau (Cape) (Pty) Ltd* **1968 (1) SA 209** (C) at 221.

[15] See in this regard *Schultz v Butt* **1986 (3) SA 667** (A) at 678-680; *Van Castricum v Theunissen*

and Another **1993 (2) SA 726** (T) at 732 *(Van Castricum)*; *Sibex Construction (SA) Pty Limited and*

Another v Injectaseal CC and Others **1988 (2) SA 54** (T) at 63-64.

[16] Van Heerden at 221.

[17] Van Heerden at 221.

[18] *Townsend Productions* at 56.

[19] *Townsend Productions* at 56; Van Heerden at 222.

[20] Van Heerden at 222.

[21] *Townsend Productions* at 53. Van Heerden at 215.

[22] *Townsend Productions* at 54; *Waste Products Utilisation (Pty) Ltd v Wilkes and Another* **2003 (2) SA 515** (W) at 577; *Lifeguards Africa (Pty) Ltd v Raubenheimer* **2006 (5) SA 364** (D) at 377; *Canon KwaZulu-Natal (Pty)Ltd t/a Office Automation v Booth and Another* **2005 (3) SA 205** (N) at 210.

[23] *Van Castricum.*

[24] Ibid.

[25] Ibid.

[26] Ibid at 732E-F.

[27] Ibid.

[28] *Printers and Finishers Ltd v Hollaway* **[1965] RPC 239** (Ch) at 255-6. See also *Harvey Tiling Co. (Pty) Ltd v Rodomac (Pty) Ltd & Another* **1977 (1) SA 316** (T) at 321G-322E.

[29] *Robb v Greer* **[1895] 2 QB 315** (CA) at 319.

[30] *Van Castricum.*