
Breach of a Restraint Order: When it Is Not Contempt of Court

Restraint of trade – contempt of court – consent orders – confidential information – solicitation

The Labour Court, in *Rotunda Proprietary Limited v Sam*, considered whether a former employee who breached a restraint of trade that had been made an order of court was guilty of contempt of court in circumstances where the underlying restraint of trade had, by effluxion of time, expired.

Rotunda Proprietary Limited (“Rotunda”) concluded a restraint of trade agreement with its former employee, which was subsequently made an order of court by agreement between the parties. The order restrained the employee, for a period of twelve months, from competing with Rotunda, soliciting specified customers and using Rotunda’s confidential information. Rotunda later alleged that the employee breached the restraint by soliciting two of its customers and sought an order declaring him to be in contempt of court. In addition, in its founding affidavit, Rotunda sought payment of R384 165.00 in ‘damages’, calculated at three times the employee’s former monthly cost to company, while the notice of motion referred to the same amount as a fine.

The first allegation of contempt concerned conduct that occurred before the restraint agreement had been made an order of court. Although the restraint operated retrospectively from an earlier date, the Court held that the employee’s conduct could not amount to contempt. The Court emphasised that contempt of court arises from the wilful and *mala fide* disobedience of an existing court order. A breach of a contractual restraint and contempt of court are distinct concepts, and conduct occurring before the order was granted could not constitute contempt.

The second allegation related to the employee’s conduct after the order had been granted. The Court found that the employee had approached one of Rotunda’s protected customers in direct competition with the business and had relied on confidential knowledge acquired during his employment. Despite being notified by Rotunda’s attorneys that his conduct breached the court order, the employee continued engaging with the customer. Having considered the evidence, the Court concluded that the employee had deliberately and in bad faith breached the restraint order. The Court accordingly found him guilty of contempt of court.

The Court further considered the appropriate remedy. By the time the matter was heard, the restraint period had expired and there was no longer any ongoing conduct requiring enforcement. The Court held that the purpose of contempt proceedings was, therefore, no longer coercive, but punitive, namely, to vindicate the authority of the Court.

The Court rejected Rotunda’s claim for damages on the basis that a claim for damages arising from the breach of a restraint agreement constitutes a separate cause of action and cannot be recovered as part of contempt proceedings, which are directed at enforcing compliance with court orders rather than compensating a litigant for contractual loss. As a result, the Court imposed a fine of R50 000.00 (which is payable to the State), with thirty days’ imprisonment as the alternative in the event of non-payment.

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Key Takeaways

The judgment confirms that a breach of a restraint agreement does not automatically constitute contempt of court. Only conduct occurring after a restraint has been made an order of court can constitute contempt.

Employers should therefore distinguish between contractual remedies and contempt proceedings when enforcing restraint obligations. The judgment also confirms that where a restraint has expired, the Court may still impose a punitive sanction to vindicate its authority, although any claim for damages must be pursued separately.

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