

# Employment Law ALERT

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CLIFFE DEKKER HOFMEYR

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## IN THIS ISSUE

Is three years too long for a restraint of trade agreement? The court has answered

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## Is three years too long for a restraint of trade agreement? The court has answered

Employers can take comfort in knowing that their protectable interests are safeguarded by the courts in the event of a breach of a restraint of trade clause. In *Warwick Wealth (Pty) Ltd v Anderson and Others (C178/2023) [2023] ZALCCT (18 May 2023)*, the court had to consider the issue of a breach of restraint of trade clause between Warwick Wealth (Pty) Ltd (the employer) and Ms Julie Anderson.

In June 2019, Anderson commenced her employment with Warwick Wealth as a client relationship specialist until her resignation on or about 21 December 2022. Her contract contained a restraint of trade clause. The clause stipulated that for a period of three years after date of termination she will refrain from *inter alia* contacting clients of the holding group of the employer, Spirit Invest Group (SIG), and soliciting business from clients of SIG. On 28 March 2023, the employer discovered that Anderson approached Westlake Golf Club, an entity within the SIG network. Unhappy with her conduct, the employer approached the court to protect its proprietary rights and to enforce the restraint of trade clause.

The court was tasked with considering whether there was a breach of the terms of the restraint of trade clause.

What was the offending conduct? Anderson approached Westlake Golf Club and solicited sponsorship using the confidential information of the employer. Westlake Golf Club fell within the employer's networks. Her conduct breached the restraint clause because she was refrained from persuading, inducing, soliciting, or encouraging any entities which the employer markets for three years. It further held that her conduct prejudiced Warwick Wealth's protectable interest of its networks.

The reasonableness of the duration of a restraint of trade clause is often the subject of several court disputes. This case confirms that a restraint period of three years was not unduly long, and employers may hold employees accountable for their conduct (and protect their proprietary rights) for extended periods of time.

**Thabang Rapuleng and Kgabi Moeng**



**Employment 2023 Rankings**

**Employment Law practice is ranked in Tier 1.**

**CDH Kenya's Employment Law practice is ranked in Tier 3.**

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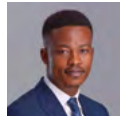
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