

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2010/41313

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE

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SIGNATURE

In the matter between:

NATIONAL HEALTH LABORATORY SERVICE

Plaintiff

and

MARINA MAGDELENA LLOYD JANSE VAN VUUREN

Defendant

S U M M A R Y

- [1] The defendant entered into an employment contract with the plaintiff. One of the terms of the contract was that if the defendant did not work for a period of two years after the completion of her training and qualification as a specialist pathologist, she would have to reimburse the plaintiff for the training costs. These costs were valued in the contract at R2 million.

- [2] The issue was whether or not the damages agreed constituted a penalty, alternatively, an excessive penalty as contemplated by the provision of the Conventional Penalties Act (CPA).
- [3] The court found that the damages claim amounted to a claim for a penalty and was subject to moderation in terms of section 3 of the CPA. Referencing such matters as *Beadica 231 CC and Others v Trustees, Oregon Trust and Others*,¹ *Sunshine Records (Pty) LTD v Frohling and Others*,² and *Western Credit Bank Ltd v Kajee*,³ the court found that the penalty stipulation in the employment contract amounted to a training bond which, like a restraint of trade, is subject to moderation by the Court in the basis of reasonableness and fairness.
- [4] The court found that the penalty was ameliorated by the 5 months the defendant worked after the completion of her training. The court held that this value to the plaintiff of the defendant's work must be weighed against the deemed costs in the penalty stipulation, which was then moderated on the basis it was fair and equitable to do so.

¹ 2020 (5) SA 247 (CC).

² 1990 (4) SA 782 (A).

³ 1967 (4) SA 386 (N).