

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024/062334

(1)	REPORTABLE: <i>No</i>
(2)	OF INTEREST TO OTHER JUDGES: <i>No</i>
(3)	REVISED:
<i>12/7</i>	
DATE	SIGNATURE

In the matter between:

WITNESS NDOU
MAROTHI MASHASHANE

First Applicant
Second Applicant

and

ACQILAH AYOB
HELLO PAISA

First Respondent
Second Respondent

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to CaseLines/Court online and by release to SAFLII. The date and time for hand- down is deemed to be 10h00 on 12 July 2024.

Order: Para [24] of this judgment.

JUDGMENT

TODD, AJ:

- [1] This matter came before me on the urgent roll on 12 June 2024.
- [2] The First Applicant opened a bank account with the Second Respondent. At least that is what he understood that he was doing.
- [3] During April 2024 he provided his bank account details to a friend who, on 6 April 2024, transferred an amount of R9,000 into his account. For reasons that are not clear on the papers, but which appear to concern the fact that the transfer into his account was regarded as improper or a suspicious transaction of some kind, the First Applicant's bank account was "frozen" and the First Applicant currently does not have access to transact on it.
- [4] The First Applicant raised this with the Second Respondent and was requested to complete certain documentation, which he says he duly completed. His account remains suspended. After he visited the Second Respondent's premises seeking an explanation, he was "warned not to come to the offices any more". As a result, he has been advised to approach this Court "as a last resort".
- [5] The First Applicant seeks an order declaring the conduct of the Second Respondent in suspending his bank account without reasonable cause to be unlawful, and directing the Second Respondent to uplift the suspension and allow him full access to transact on the account forthwith.
- [6] As indicated, the First Applicant was unrepresented and is a lay person, although he was assisted by the Second Applicant, who he identified as a church leader.

- [7] There are significant formal deficiencies in the founding papers. I do not point all of these out, but they provide, by themselves, sufficient grounds to dismiss the matter. Since, however, the First Applicant is unrepresented and a lay person, I considered it appropriate to place substance over form, and to see what can be understood from the papers such as they stand regarding what caused him to approach this court.
- [8] The Second Respondent delivered an answering affidavit, and Mr Kok appeared on its behalf. In its answering papers the Second Respondent points out the various formal deficiencies in the application, including the misjoinder of the Second Applicant (who is described as an "*amicus curiae*" but in fact has no standing in the matter of any kind) and the First Respondent (who is an employee of the Second Respondent and has no contractual or other relationship with or responsibility towards the First Applicant).
- [9] On the substance of the issue that has arisen, the Second Respondent is a money transfer service or, as it describes the position, is in business "to assist customers with money related solutions". Together with Sasfin Bank, the Second Respondent provides what it refers to as a "co-branded banking solution". Under this arrangement Sasfin provides the banking infrastructure and licensing, and physically creates and holds a bank account and issues a bank card. The Second Respondent then distributes the bank card, branded with its Hello Paisa insignia, and the card also displays the words "issued by Sasfin".
- [10] According to the Second Respondent the First Applicant's account has indeed been suspended in consequence of a suspicious transaction. But this is not at the instance of the Second Respondent, which has no power either to suspend an account or to uplift that suspension. The Second Respondent, unlike Sasfin, is not a registered banking institution. Instead, Sasfin is the only entity that has the authority to effect suspension of accounts, and to deal with accounts as the law may require.
- [11] Apart from raising a point about the non-joinder of Sasfin, the Second Respondent points out that Sasfin has obligations under its banking licence to take relevant actions in circumstances where there is suspicious activity on an

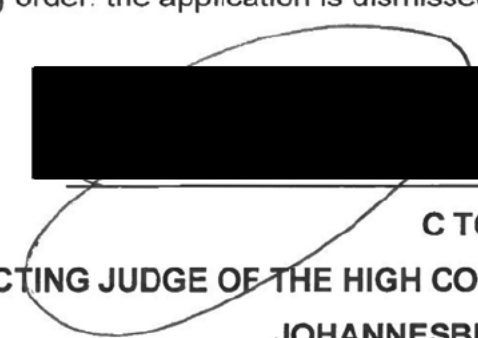
account. It states that the First Applicant has provided contradictory statements about the matters apparently under investigation.

- [12] This leaves the First Applicant in something of a stalemate. He does not appear to have access to a customer services function within the First Respondent that can assist him to regain access to what are not disputed to be his own funds.
- [13] It is no doubt frustrating for the holder of a bank account to learn that he has no access to his own funds for reasons that have not been fully explained to him or, if they have, that he does not fully understand. The First Applicant described various ways in which he had attempted to resolve the situation through interacting with the Second Respondent. These efforts came to naught.
- [14] That being said, there are numerous problems with the manner and form in which the First Applicant has approached this court, including that no proper grounds are made out in the papers for enrolling the matter on this court's urgent roll, and there is a clear alternative remedy available. This is explained in a section of the terms and conditions applicable to the relevant account dealing with customer complaints, which in addition to providing access to a call centre number (which it seems the First Applicant has tried unsuccessfully to use) gives contact details for the independent ombudsman for banking services. The First Applicant has not tried that avenue.
- [15] Nor is it clear in any event that the First Applicant has an immediate or ongoing right of access to his funds in the particular circumstances that have arisen, and pending the conclusion of whatever further regulatory investigation may be taking place regarding the transaction or transactions which appear to have been flagged as suspicious and which caused the temporary suspension of the account.
- [16] Finally, the amount of money in the account at issue is less than R10,000. Although this might be important to the First Applicant and represent a substantial sum for him, the fact of the matter is that if he is unable to secure redress through any alternative means and persists in believing that he should seek the intervention of a court, this is a matter that plainly falls within the jurisdiction of

the Small Claims Court, which is more readily accessible to unrepresented applicants than this court.

- [17] For all of these reasons this is an application which, it seems to me, should be dismissed rather than simply being struck from roll.
- [18] I have carefully considered whether or not the First Applicant should be ordered to pay the Second Respondent's costs incurred in opposing this application. The First Applicant has been unsuccessful. He has chosen the wrong route in his quest for redress. There are, however, clear indications of various efforts that he made first in an attempt to resolve the matter before approaching this court.
- [19] Although he has not yet approached the banking services ombudsman (a course of action that is still available to him) he submitted that he did not have access to the detailed conditions of the contract including its provisions which provide details of that office. The conditions, he states, were simply accepted by him electronically when he opened the account, and no written copy was provided.
- [20] Of course the First Applicant may be expected to have sought out those conditions before bringing proceedings such as the present, and also to have considered less expensive means of attempting to assert his rights than approaching the High Court, which inevitably places him at risk of a substantial costs burden if he is unsuccessful.
- [21] Nevertheless, I accept that the First Applicant approached this Court as a frustrated citizen without the means to secure legal representation, and that he made a *bona fide* attempt to assert his rights.
- [22] On an overall conspectus of the matter it seems to me to be in the interests of justice that I should not grant an order for costs in the matter.
- [23] The First Applicant should, however, realise that if he were to approach this Court again on similarly flimsy legal grounds, he will risk having an order for costs made against him that might far exceed the amount that is in issue when he approached the Court in the first place.

[24] In the circumstances I make the following order: the application is dismissed.



C TODD
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of Hearing: 12 June 2024

Date of Judgment: 12 July 2024

APPEARANCES

for the Applicants: in person

for the First Respondent: Rudie Kok Attorney