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**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case number: 17047/24

In the application between:

JYDE AREMU BREIMMO ADELAKUN

Applicant

and

**FIRST RAND BANK LTD
t/a FIRST NATIONAL BANK**

First Respondent

**CHIEF EXECUTIVE OFFICER
& EXECUTIVE DIRECTOR**

Second Respondent

**DAVID NDABA (ADMINISTRATOR OF
FIRST RESPONDENT)**

Third Respondent

SOUTH AFRICAN RESERVE BANK

Fourth Respondent

**GOVERNER OF SOUTH AFRICAN
RESERVE BANK**

Fifth Respondent

Coram: Acting Justice A Montzinger

Heard: 08 August 2024

Delivered: 12 August 2024

JUDGEMENT ON URGENCY
(12 August 2024)

Montzinger AJ

1. This matter comes before the court as an urgent application by the applicant, Mr. Jyde Aremu Breimmo Adelakun, seeking various forms of relief against the respondents. Mr. Adelakun, who represented himself, is apparently a citizen of the United States of America with a qualification or some background in law.

2. The applicant's dissatisfaction with the first and fourth respondent, FirstRand Bank Limited and the South African Reserve Bank respectively, began in 2018 when his bank account with the first respondent was blocked. The funds therein were forfeited to the state under the Currency Exchange Act 9 of 1933 and its regulations.

3. A condensed chronology that I could extract from the papers filed, that outlines the key events and basis for the applicant to launch this application, is as follows:

3.1 On 28 August 2018 the first respondent, Firstrand Bank, received an order from the South African Reserve Bank (SARB) under Exchange Control Regulations 22A and/or 22C, which blocked the applicant's account with

number 6[...] and prohibited any withdrawals or appropriations of the funds therein. This order was to remain in force until expressly uplifted by the Reserve Bank.

3.2 The first respondent on 1 October 2018 transferred the sum of R6,447,708.71 from the applicant's cheque account to an exchange control suspense account (account number 5[...]). Subsequently, the funds were moved to an internal suspense account (account number 9[...]), pending further instructions.

3.3 On 11 October 2018 a partial refund of R2,645,355.71 was made to the applicant's cheque account following further instructions from the Reserve Bank. The remaining balance of R3,802,353.00 was retained in the internal suspense account.

3.4 After allegation of fraud were made against the applicant by an entity named Worldpay the applicant's cheque account was again placed on hold during October 2018.

3.5 This court granted an order on 6 December 2018 placing a hold on the cheque account pending the outcome of proceedings to be instituted by Worldpay for the return of the allegedly stolen funds.

3.6 On 28 March 2019 the applicant was placed into provisional sequestration by order of this court and on 6 January 2020 his estate was finally sequestrated.

3.7 A payment of R2,639,143.45 was on 23 April 2020 made from the applicant's cheque account to the account of the applicant's insolvent estate, as directed by the administrators of the estate.

3.8 On 30 August 2021 a Notice and Order of Forfeiture was published by the fifth respondent, the Reserve Bank, instructing that the funds held in the

blocked account (account number 6[...]) be forfeited to the State. This order was published in the Government Gazette.

3.9 The First Respondent complied with the Notice and Order of Forfeiture on 28 March 2022 by transferring R3,802,352.00 to the Reserve Bank.

3.10 The Applicant was notified of the payment of R2,639,143.45 to the trustee of his insolvent estate via a letter from the First Respondent dated 7 May 2024.

3.11 The applicant became a father on 14 June 2024 and launched this application on 1 August 2024 for hearing on 8 August 2024.

4. The respondents, comprising FirstRand Bank Limited, its executives and administrators, and the South African Reserve Bank, all opposed the application on several grounds. These grounds included the court's lack of jurisdiction, that the matter lacked urgency and was an abuse of court process, and that the relief was simply incompetent.

5. The applicant approaches the court nearly six years after the events on which he relies for the purported damages, on an urgent basis, claiming that the urgency is triggered by his recent fatherhood on 14 June 2024.

6. While the application is obviously not urgent and while the normal order will be to strike the application with costs, I decided to provide brief reasons since the applicant represented himself. I will briefly remark on the fact that the applicant represented himself and how that affected the manner in which I approached the matter.

7. At the hearing of the matter, the applicant represented himself, while *Mr. Smit* represented the first to third respondents (the "FNB respondents") and *Mr. Majozi* represented the fourth to sixth respondents (the "Reserve Bank respondents").

The relief the applicant seeks

8. As mentioned Mr. Adelakun, on motion and on an urgent basis, firstly, seeks a declaratory order that the conduct of the FNB respondents violated his constitutional rights as set out in the Bill of Rights. Similarly, he seeks a declaration that the conduct of the Reserve Bank respondents also violated these rights, rendering their actions unconstitutional and invalid.

9. In addition to the declaratory relief, the applicant demands that the FNB respondents immediately reinstate his personal savings account (account number 6[...]) previously held with FirstRand Bank.

10. He further demands the reinstatement of the amount of R 5,309,013.45 that was held in this FNB account as of 27 August 2018. The applicant argues that this amount was unlawfully frozen and subsequently forfeited without due process, violating his property rights under section 25 of the Constitution. The applicant also seeks an order granting him unfettered access to the reinstated account, insisting that such access be provided forthwith or within five working days from the date of the court's order.

11. Then the applicant claims that the Reserve Bank respondents be mandated to refund the amount of R 3,802,353. The applicant also requests that this amount be refunded within five days of the court's order, arguing that the forfeiture was unlawful and conducted without providing him an adequate opportunity to contest the decision of forfeiture.

12. The applicant also claims extensive damages. He claims R 60,000,000 (sixty million rands) in general damages from the FNB respondents. He argues that the unlawful freezing of his accounts, the withholding of his funds, and the failure to provide due process have caused significant financial and emotional harm, justifying the substantial damages he is claiming. He also seeks R 35,000,000 (thirty-five million rands) in damages from the Reserve Bank respondents, arguing that their actions, particularly the forfeiture of his funds, have resulted in severe financial losses and infringements on his constitutional rights.

13. The applicant demands a mandatory interdict requiring all the respondents to pay him an additional R 10,000 per day as damages from 28 August 2018 until full compliance with the court's judgment. This claim is predicated on the ongoing harm he alleges has been caused by the respondents' failure to resolve the matter and restore his financial standing.

14. The applicant's claims are premised on the assertion that the respondents' actions—freezing his account, forfeiting his funds, and failing to provide proper recourse—were unconstitutional and invalid. He argues that these actions have caused him severe financial loss, emotional distress, and infringed his constitutional rights. He explained in his papers that the large monetary amounts claimed reflect his view of the extent of the harm caused by the respondents' actions and the need for substantial restitution and damages to address these wrongs.

The applicant in his personal capacity.

15. In our law, the right to access justice is a fundamental principle enshrined in s 34 of the Constitution, which guarantees the right of access to courts. This right implies that courts must be accessible, and procedures should not unduly hinder an unrepresented person's ability to present their case. Recognising that unrepresented litigants may lack the legal expertise to navigate complex legal procedures, courts are expected to provide some degree of assistance or leniency, such as explaining legal procedures or allowing flexibility in procedural matters.

16. However, this accommodation has clear limits. In the case of *S v Khanyile*¹ the court held that a judicial officer is required to assist an unrepresented accused to present their defence properly and fairly. Similarly, in *De Beer NO*², the Constitutional Court emphasised that the rules of court and procedures must not unduly prevent a party, whether represented or unrepresented, from having their case heard.

¹ *S v Khanyile and Another* 1988 (3) SA 795 (N)

² *De Beer NO v North-Central Local Council and South-Central Local Council and Others* (2002) (1) SA 429 (CC) paras 10 - 15

17. This assistance which no doubt also applies to civil proceedings is part of the judicial duty to ensure a fair trial, but it does not mean the court should act as the litigant's legal representative. The assistance should be reasonable and should not compromise the impartiality of the court.

18. Despite this obligation to assist a litigant a court is not required to disregard procedural rules or allow unrepresented litigants to disrupt the order of the court or delay proceedings unduly. The principle of fairness applies to all parties, and the court must ensure that the rights of the opposing party are not prejudiced by excessive leniency toward an unrepresented litigant.

19. In the context of this matter, because Mr. Adelakun as the applicant, represented himself I made every effort to ensure that he was fully informed of the court processes and his rights. I explained the legal procedures in detail and offered him the opportunity to seek legal representation, understanding the challenges he might face in presenting his case effectively. Despite these efforts, and since it was apparent that his application was marked by significant procedural and substantive deficiencies, he still decided to press ahead.

20. The court cannot permit an unrepresented litigant to circumvent long standing legal processes or present a poorly constructed and incoherent case simply because of self-representation.

21. While I am aware and have compassion for the challenges faced by an unrepresented litigant, like the applicant, and although a court should strive to accommodate them within reasonable limits, this accommodation cannot compromise the integrity of the judicial process.

The procedural shortcomings in the application

22. Before a court can even consider the issue of urgency, it must first establish its own jurisdiction over the matter. Jurisdiction is the foundation upon which all judicial proceedings are based, and without it, a court has no power to hear or decide a case, regardless of how urgent the matter may appear.

23. In this scenario where the applicant resides in Cape Town, Western Cape Province, and seeks relief against respondents who are all stationed in Gauteng, with the events supporting the cause of action occurring in Gauteng, the court in Cape Town, Western Cape would need to determine whether it has the necessary jurisdiction before addressing any basis of urgency. The absence of jurisdiction renders any further inquiry into the merits of the case, even its urgency, irrelevant. Thus, jurisdiction is the threshold issue that must be resolved before any other procedural and substantive aspects of the case can be considered.

24. Jurisdiction is confined to the geographical area where the cause of action arose or where the parties are domiciled. This territorial limitation ensures that courts exercise authority within their legally prescribed boundaries. Given that the events giving rise to the cause of action occurred in Gauteng and the respondents are domiciled there, this division would lack jurisdiction. This conclusion is reinforced by the principle of *ratio jurisdictionis*, which requires a sufficient connection between the court's territorial jurisdiction and the cause of action or the parties involved³.

25. Furthermore, the principle of *forum rei sitae*, which asserts that the court where the property or subject matter of the dispute is situated has exclusive jurisdiction, would suggest that only the Gauteng courts have the appropriate jurisdiction over the applicant's complaint. The fact that the applicant resides in Cape Town does not override this jurisdictional limitation, as where an applicant or plaintiff is domiciled or resides, as a single consideration is not sufficient to establish jurisdiction if the cause of action or the defendants are located elsewhere.

26. Therefore, a court after determining that it lacks jurisdiction, would ordinarily not proceed to consider the issue of urgency, as it would have no power to grant relief in a matter over which it has no jurisdiction. See *Gallo Africa Ltd*⁴ where the Supreme Court of Appeal emphasised that jurisdiction is a fundamental preliminary issue. The court therefore cannot proceed to the merits of a case without first satisfying itself that it has the legal authority to do so.

³ See *Eilon v Eilon* 1965 (1) SA 703 (A).

⁴ *Gallo Africa Ltd and Others v Sting Music (Pty) Ltd and Others* 2010 (6) SA 329 (SCA)

27. Ordinarily I would also have struck the matter from the roll for a lack of jurisdiction. However, in the interest of clarity and being mindful that the applicant is self-represented and to prevent a further abuse of process on the same facts in a different division, I therefore deal with the basis why I found that the matter lacked urgency.

The lack of urgency

28. Rule 6(12) of the Uniform Rules of Court provides that an applicant must explicitly set forth the circumstances rendering the matter urgent and demonstrate that substantial redress cannot be obtained at a hearing in due course. Urgency must be real and immediate, not contrived or self-created. The court must consider whether the applicant will suffer prejudice if the matter follows the normal procedural timeline, and whether the applicant has provided a satisfactory explanation for any delay in bringing the application.

29. In *East Rock Trading*⁵ the court emphasised that urgency is not established merely because the applicant desires an expedited resolution. The applicant must demonstrate that without immediate court intervention, a lack of substantial redress will be suffered.

30. Upon reviewing the facts of this case, it is clear that the application does not meet the requirements for urgency as set forth in rule 6(12). The applicant has been aware of the actions taken by the respondents since 2018, including the blocking of his account and the forfeiture of his funds. Despite this knowledge, the applicant delayed nearly six years before seeking relief. This delay is inexplicable and undermines any claim of urgency.

31. The purported trigger for urgency—the applicant’s recent fatherhood on 14 June 2024—does not justify the immediate and extraordinary relief sought. The applicant knew of his financial circumstances long before the birth of his child and

⁵ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 at par 6

has provided no compelling evidence that his situation has changed in a way that would necessitate urgent court intervention.

32. The respondents were given an unreasonably short period of time to respond to the application, which was filed on 1 August 2024, with a deadline for answering affidavits set for 6 August 2024. This timeline is not only unreasonable but also indicative of an abuse of the court process. Urgent applications are reserved for matters requiring immediate intervention, not for situations where the urgency has been self-created or where the applicant has failed to act timeously.

33. This is such a matter. The applicant used a situation to create a basis to approach the court to engage its resources and summoned respondents to court on extremely unreasonable timelines. The respondents were then required to defend a matter that should never been pursued in this court, let alone have been instituted on an urgent basis.

Conclusion

34. After careful consideration of the facts and legal principles involved, I am not convinced of this division's jurisdiction to entertain the matter, given that the events in question occurred in Gauteng, where the respondents are also based.

35. Even if jurisdiction could be established, the lack of urgency still warrants striking the application from the roll.

36. In light of the above and since the respondents were compelled to come to court to oppose an application that had a real jurisdictional impediment and failed to address the urgency requirements, the applicant should be compelled to pay them their full costs.

37. The application is struck from the roll with costs for a lack of jurisdiction and urgency, on an attorney and client scale, including the costs of counsel, where so employed.

A MONTZINGER
Acting Judge of the High Court

Appearances:

Applicants' counsel: Mr. Adelakun (in person)

Applicant's attorney: In person

First to third respondents' counsel: Mr. E Smit

First to third respondents' attorneys: Jason Michael Smith Inc.

Fourth to sixth respondents' counsel: Mr. M Majozi

Fourth to sixth respondents' attorneys: Macrobert Inc.