



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2024-149197

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

DATE 05/02/2025

LENYAI J

In the matter of:

FELARONA (PTY) LTD

Applicant

And

MINISTER OF FINANCE

First Respondent

THE TREASURY

Second Respondent

THE SOUTH AFRICAN RESERVE BANK

Third Respondent

**THE SOUTH AFRICAN REVENUE SERVICE
ent**

Fourth Respond-

BIDVEST BANK LTD

Fifth Respondent

And

In re:

THE SOUTH AFRICAN RESERVE BANK

Applicant

And

THE MINISTER OF FINANCE

First Respondent

THE TREASURY

Second Respondent

THE SOUTH AFRICAN RESERVE BANK

Third Respondent

THE SOUTH AFRICAN REVENUE SERVICE

Fourth Respondent

BIDWEST BANK LTD

Fifth Respondent

Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14:00 on 05 February 2025.

JUDGMENT

LENYAI J

[1] This is an application brought on an urgent basis by the applicant wherein the applicant seeks the following orders:

1.1 An order interdicting and restraining the third respondent from:

1.1.1 Requiring any submissions from the applicant in response to the notice of intention to issue a forfeiture order contained in the third respondent's letter dated 25th November 2024 addressed to the applicant ("the forfeiture notice"); and

1.1.2 Making any decision in respect of the forfeiture notice pending the final determination of case number 21295/2022 of the above Honorable Court.

1.1.3 Reserving the cost of this application.

- [2] The third respondent also brought a counter application wherein the following relief is sought:
- 2.1 To the extent that dismissal of the applicant's urgent application is declined by the Court, directing that, pending the final determination of the review proceedings enrolled before this Honourable Court and the case number 21295/2022 (pending application), the duration of the blocking order at issue in the pending application is extended and will continue to run for a time of 90 (ninety) days after the date on which the dispute in the pending application is finally resolved;
 - 2.2 To the extent that the Court deems it necessary for in order granting condonation for the date on which the third respondent's affidavit was delivered;
 - 2.3 Directing any respondent who may oppose the interlocutory application to pay the third respondents legal costs.
- [3] The applicant avers that on the 23 February 2022, the third respondent claimed that a duly authorised official issued a blocking order in respect of funds standing to the credit of the applicant in an amount exceeding \$ 2.7 Million, held by the fifth respondent.
- [4] The applicant contends that the alleged blocking order has never been produced and the name and identity of the allegedly authorised official has never been provided. The applicant further submits that there is no affidavit from the alleged authorised official and the alleged blocking order relied on the flimsiest information.
- [5] The applicant submits that he instituted proceedings under case number 21295/2022 in this Honourable Court , challenging the existence and validity of the alleged blocking order, seeking to review and set it aside (the pending application).
- [6] The applicant submits that no investigation has been conducted by the third respondent either before or after the alleged blocking order. On the 25th November 2024, without the pending application being determined, the third respondent gave notice of its

intention to forfeit the applicant's funds to the State, which it will do prior to the disputed blocking order expiring on the 22nd February 2025.

- [7] The applicant avers that attempts to avert the need to bring this urgent application were unsuccessful. This application was issued and served on 19 December 2024 and must be determined before the third respondent proceeds to impose the forfeiture order.
- [8] The applicant submits that in August 2024 the third respondent's attorneys indicated that they intended to file additional documents in the pending application and that a semi-urgent application would be brought to extend the period of validity of the alleged blocking order. This indicated application has not seen the light of day neither have the additional documents. Instead, the forfeiture notice dated 25th November 2025 attempted to circumvent the pending application by giving notice of the third respondent's intention to forfeit the allegedly blocked funds to the State, without the pending application being determined.
- [9] The applicant avers that his attorneys responded in a letter dated the 9th December 2024, requesting an extension of time to make representations, up to 31st January 2025. This request was refused but the third respondent's attorneys granted an extension until the 7th January 2025.
- [10] The applicant further avers that on the 12th December 2024 his attorneys addressed a letter to the third respondent's attorneys demanding an undertaking that they would not proceed to make any declaration of forfeiture until the final determination of the pending application. The demand was refused in a letter dated the 13th December 2024. On the same day the applicant's attorneys addressed another letter to the third respondent's attorneys, proposing that both parties should request a special allocation for the pending application and that the third respondent undertakes not to proceed with any decision regarding forfeiture until the pending application has been finally

detrmined. In the same letter the applicant's attorney proposed that without conceding the validity of the alleged blocking order, it be extended pending the final determination of the pending application. However on the 17th December 2024 the proposal was rejected by the third respondent.

- [11] The third respondent on the other hand submits that it is trite that a litigant is duty bound to launch any urgent proceedings it chooses to, at the first available opportunity.
- [12] The third respondent avers that the applicant contends that its application meets the requirements of urgency for reasons it captures as follows in its replying affidavit to the counter application at para 28.5 "*I have sufficiently explained the trigger for the filling of additional of additional documents in the pending application, necessitated by the refusal on the part of the third respondent to receive submissions or engage in any form of meeting as part of a process that could be described as an "investigation".*
- [13] The third respondent submits that the trigerring event on which the applicant places reliance is entirely benign. What appears to escape the applicant is that the following facts are either common cause or put differently they cannot be seriously be disputed by the applicant:
- 13.1 The applicant has been aware of the blocking order for a number of years; and
- 13.2 There was no impediment to the applicant seeking the relief it now seeks as a matter of urgency at the time the pending review was instituted, that is, over 900 calendar days ago.
- [14] The third respondent further avers that on the 5th August 2024 a letter was sent to the applicant requesting that the applicant agrees to the extension of the blocking order, which request was refused by the applicant on the 14th August 2024.

- [15] The third respondent avers that the urgency that the applicant claims is self created and the courts have on numerous occasions refused to come to the assistance of such litigants.
- [16] In the matters of **Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and Others 2014 JDR 1312 (GP)** at paras 63 and 64; and **Export Development Canada and Another v Westdawn Investments Propertary Limited and 2 Others ZAGPJHC 2018** at apara 7, the courts found that a party will not be permitted to claim urgency where the urgency is self created, as a litigant seeking the indulgence of urgent court enrollment bears the onus of justifying the indulgence sought.
- [17] In the matter of **Bolman and Another v African National Congress and Others [2011] ZAECHC 8** at para 11, the court held that a litigant approaching a Court on a basis of self created urgency "*must bear the consequences*" of its inaction.
- [18] Having considered the submissions of both parties and also taking into consideration the case law, there are several triggers that the applicant missed. The first trigger was in April 2022 when the applicant launched the pending application, the second trigger was on the 5th August 2024 when the third respondent proposed that the parties agree to extension of the blocking order, the third trigger was on the 14th August 2024 when the applicant refused the proposal of the third respondent to extend the blocking order.
- [19] I am of the view that the applicant should have brought this application much sooner than it did. There is no doubt in my mind that the matter is urgent however the urgency is self created by the applicant's inaction and delay in bringing this application application and the court cannot permit this kind of behaviour, and the application stands to be struck off the roll for lack of urgency.

[20] The Third respondent (Applicant in the counter application) brought a counter application seeking to extend the blocking order pending the finalisation of the pending application and the extension will continue to run for a period of 90 days after the date on which the dispute in the Pending Review is finally resolved. From the submissions made in court and my reading of the papers the relief sought is not opposed and stands to be granted.

[21] in the premises the following orders are made:

(a) The application is struck off the roll for lack of urgency with costs on an attorney and client scale.

Re: Counter Application:

(b) Pending the final determination of the review proceedings enrolled before this Honourable Court under case number 21295/2022 (the Pending Review), the duration of the blocking order at issue in the Pending Review is extended and will continue to run for a period of 90 days after the date on which the dispute in the Pending Review is finally resolved;

(c) The costs of the counter application are reserved



LENYAI J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

Attorney for Applicant	: Mr K van Huyssteen
Instructed by	: Fluxmans Inc
Counsel for the Respondents	: Adv Mkhukuli

Instructed by : Gildenhuys Malatji Inc

Date of hearing : 29 January 2025

Date of Judgement : 05 February 2025