

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025/054716

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
DATE: 08/05/2025	
SIGNATURE	

In the matter between:

CUBA DUMAKUDE

APPLICANT

and

BIDVEST BANK LIMITED

RESPONDENT

JUDGMENT

EPSTEIN AJ

1. The Applicant, who is a client of the Respondent, Bidvest Bank Limited, seeks an order directing the Respondent to immediately unfreeze and release all funds held in the Applicant's bank account amounting to R448,838.35.
2. The Respondent has opposed the application. Firstly, it is contended that the application was not urgent. Secondly, the Respondent relies upon its contractual relationship with the Applicant and states that in terms of its terms and conditions, it may restrict the use of or suspend the customer's account if it suspects that the account has been or is being used fraudulently. The Respondent states that it is entitled to restrict the Applicant's bank account in the case of any suspicion of the account being used unlawfully for money laundering purposes, without notice to the Applicant.
3. Firstly, in the regard to urgency, the Respondent, in its answering affidavit, sets out the well-known principles regarding urgent applications and alleges that the Applicant failed to comply with Rule 6(12).
4. The Applicant's bank account was frozen by the Respondent on or about 20 February 2025. Thereafter, the Applicant describes a litany of attempts to ascertain from the Respondent the reason why the account has been frozen, with undertakings by the Respondent to revert. Moreover, the Applicant has detailed his attempts to secure legal representation.

5. Unable to afford attorneys, he tried to secure *pro bono* assistance, as well as legal aid. Finally, he was referred by a friend of his to contact his current firm of attorneys who have accommodated him. Taking into account the Applicant's personal position, and the numerous attempts to get clarification from the Respondent as to why the account was frozen, I am satisfied that the urgency is not self-created.

6. The Applicant has detailed a chronology of events dealing with his attempts to obtain reasons from the Respondent as to why the account was frozen. He was met with responses such as:

6.1. 4 April 2025: "The customer contact centre or agent will be looking into your enquiry. You will receive a response within eight hours..."

6.2. 7 April 2025: In a response to a letter from the Applicant's attorneys stating that the Applicant had not received a substantive response to correspondence, a response was received stating "We are currently engaging with internal stakeholders and will respond in due course".

6.3. 7 April 2025: The Applicant's attorneys recorded in a letter a telephone discussion with the Respondent's representatives and stated "as discussed, Bidvest has committed to furnishing us with a formal response to the matters raised in both letters no later than close of business today, 8 April 2025".

6.4. 8 April 2025: The Respondent replied as follows: "There is certain information which I am still waiting for from internal stakeholders to finalise the formal response."

6.5. 8 April 2025: The Applicant's attorneys wrote highlighting that the Respondent's response did not specify the timeframe required to finalise the matter but "as a gesture of good will" agreed to grant the Respondent an extension until 9 April 2025 to "resolve this issue".

6.6. 9 April 2025: The Respondent replied stating "the Bank is contractually entitled by the terms and conditions governing the relationship with your client, at its sole discretion and without notice to restrict or suspend the use of an account or platform on reasonable belief that the same is being used contrary to the terms and conditions or in contravention of any applicable law." The Respondent further stated "it is also worth reiterating, that the Bank has a legal obligation to ensure that its services and platforms are not used in a manner that contravenes any law or regulations." The Respondent stated that it will defend any legal action.

7. It was only after receipt of the answering affidavit that the Bank now explained why it has frozen the account. In particular, it attached a letter from SARS addressed to the Respondent. The letter refers to the Applicant's ID number and states the following:

"You are required to pay to the South African Revenue Service (SARS) an amount stated below from any account that you hold for or owe to the tax payer. The fund should be credited to: SARS VAT using the payment reference number PRN below. Please note that in terms of section 179(3) if you do not comply with this notice and part with any money contrary to this notice, then you become personally liable to SARS for payment of

that amount of money. In addition, section 234(n) provides that it is a criminal offence to wilfully and without just cause not comply with this notice...".

8. There is also a supporting affidavit from SARS attached to the answering affidavit.
9. The Applicant responds by stating that SARS conduct is unlawful, disproportionate and punitive.
10. The problem facing the Applicant is that there is a material non-joinder of SARS which has a direct and substantial interest in the matter. The fact that the Respondent has attached a supporting affidavit from SARS is insufficient. SARS should be formally joined.
11. It is nevertheless necessary to make some comments regarding the Bank's response to the requests made by the Applicant for information as to why the account has been frozen. A bank's relationship with its customers is contractual. However, banks are more than depositories of their clients' money. They play a pivotal role in society and in the economy. Banks are expected to conduct themselves in accordance with ethical principles. By virtue of the role which banks play in society, it is necessary that the banking profession should retain its professional dignity and reputation of reliability in which the public as a whole generally repose confidence. The public would expect banks to adhere to the principle of integrity in all their dealings and always to provide clear, understandable and accurate information. See *Nedbank Limited v ABSA Bank Limited 2017 JDR 1197 (GJ)*, pp 27-28. I have already referred to the numerous enquiries made by the Applicant to ascertain

why the account has been frozen. The Respondent chose not to deal with the Applicant's chronology which must therefore be accepted.

12. The freezing of the account is of importance to the Applicant, but the Respondent's response was high-handed and somewhat indifferent to the Applicant's plight. There is no reason why the Respondent could not in correspondence with the Applicant, have furnished the information given in the answering affidavit. It might, have led the Applicant to adopt a different approach to the matter.
13. The Respondent could have informed the Applicant of the letter from SARS addressed to the Bank on 23 April 2025, before this was only referred to in the answering affidavit.
14. This matter is removed from the roll so as to allow the Applicant to join SARS.
15. Insofar as costs are concerned, these are reserved. However, the Respondent is precluded from claiming any costs from the Applicant up to the date of filing of its answering affidavit.



EPSTEIN AJ

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG