

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 054716/2025

DATE: 21-05-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 21 May 2025

SIGNATURE [REDACTED]

10 In the matter between

CUBA DUMAKUDE

Applicant

and

BIDVEST BANK LTD

First Respondent

CSARS

Second Respondent

J U D G M E N T

20 CRUTCHFIELD, J: The applicant, Cuba Dumakude, approaches this court urgently for an order that the first respondent, Bidvest Bank Limited, immediately unfreeze his bank account number xxxxx held by the applicant with Bidvest Bank Limited ("the account"), and release the funds for the benefit of the applicant in the amount of

R448,838.35, together with ancillary relief, including costs on an attorney and client scale.

The first respondent, Bidvest Bank Limited ("Bidvest") opposes the application. The applicant joined the second respondent, the Commissioner for the South African Revenue Service ("SARS"), to the proceedings after the institution thereof. SARS opposes the application.

The applicant alleges that Bidvest froze the account on 20 February 2025 or thereabouts, and that it did
10 so without prior notice to him or valid justification for the freeze.

The applicant has not had access to the funds of R448 838.35 since 20 February 2025 or thereabouts. On 24 March 2025, approximately one month after becoming aware of Bidvest freezing the account, the applicant contacted Bidvest in respect of the alleged financial and personal hardship caused to him as a result of the ongoing freeze of the funds in the account, and Bidvest's failure to finalise its investigation into the funds and the source of those funds.

20 This being a matter that comes before the court on an urgent basis, the applicant is obliged to comply with rule 6(12) of the uniform rules of court and demonstrate compliance with the two requirements thereof.

Firstly, the applicant must articulate the specific facts based upon which the applicant alleges that the

application is urgent and furthermore, demonstrate why the applicant will not receive substantial redress at a hearing in due course.

The grounds of urgency upon which the applicant places reliance include the potential collapse of his business, personal hardship and his inability to secure legal advice in respect of the issues raised in this application.

The applicant alleges that the freezing of the account resulted in him being unable to pay suppliers of his
10 business, employees of the business and operational costs, resulting in reputational damage to him and the business and loss of business contracts.

No detail is finished in respect of such reputational damage or the loss of any business contracts due to Bidvest freezing the account. Furthermore, no details are furnished in respect of the identities of suppliers who the applicant allegedly was unable to pay, consequences of that alleged inability to pay suppliers, no details of the operational costs that allegedly were unpaid and any consequences pursuant
20 thereto.

In respect of the applicant's alleged personal hardship, the applicant alleges an inability to meet basic living expenses "due to restricted access to (his) sole business account." Accordingly, the applicant categorises the account in terms of the founding affidavit as his "sole

business account”.

Furthermore, the applicant alleges that he could not secure legal assistance in order to deal with Bidvest’s freeze of the account.

Eventually on 31 March 2025, approximately six weeks after becoming aware of the freeze of the account, the applicant contacted attorneys who eventually agreed to assist him and who were instrumental in bringing this application.

10 Importantly, the applicant contends that the account is his “primary source for daily expenses, business operations and debt obligations”. See paragraph 3.32 at CaseLines page 001-9.

As a result, the applicant alleges that he could not pay the rental and that his landlord, who is unnamed, agreed to a grace period for the month of March 2025. Nor could the applicant allegedly meet his payroll obligations in respect of four employees, each allegedly receiving R6 500 per month, amounting to a total of R26 000.00 per month.

20 As a result, the applicant contends that the business will collapse if the order sought by him urgently in terms of the notice of motion, is not granted by this court.

Accordingly, the urgency pursuant to which the applicant approaches this court is that the account is his primary source of funds. The first respondent, however,

demonstrated effectively that the account was dormant for approximately one year prior to receipt of the deposit of the funds in question, being the balance of a deposit of R900 000.00 made on 17 February 2025 into the account.

For the sake of clarity, the funds of R448 838.35 are the balance of a deposit of R900 000.00, and the remaining balance in the account when Bidvest froze the account on or about 20 February 2025.

The first respondent demonstrated that the account
10 was not used for the payment of rent, salaries or supplies as alleged by the applicant, from 1 April 2025 to 21 February 2025, contrary to the applicant's assertions in the founding affidavit.

The applicant in reply, revealed that he does in fact have various other banking accounts and that the account is not his sole account or his sole source of funds. This raises the question of why the deposit of R900 000 from Hill Side Trading And Projects (PTY) Limited, allegedly a payment resulting from a legitimate transaction, was paid
20 into a dormant account in circumstances where the applicant has other banking accounts, including a bank account held at Tyme Bank.

The applicant relies for his urgency in the founding papers upon the account being his primary business account. However, in reply, the applicant denies that the

account is his sole or primary account and refers to other banking accounts operated by him.

That contradiction by the applicant is fatal to the alleged urgency upon which the applicant places reliance, being the prejudice that he is allegedly suffering due to his primary business account being frozen and the applicant not having access to the funds therein.

The applicant's notice of motion is dated 15 April 2025, approximately six to seven weeks subsequent to the
10 applicant becoming aware of Bidvest freezing the account. The applicant knew from as early as 20 February 2025 that the account was frozen.

I take account of the applicant's alleged inability to obtain legal assistance to deal with the freezing of the account. I am sympathetic towards the applicant in this regard.

The applicant, however, served the application, together with a joinder application, on the second respondent approximately three weeks later, on 7 May 2025,
20 after receipt of the first respondent's answering affidavit.

This is notwithstanding that Bidvest delivered its answering papers on 24 April 2025, which included the third party appointment of Bidvest by SARS. Yet, the applicant waited until 7 May 2025, to deliver the application and the joinder application to SARS.

The application was set down for hearing on 29 April 2025 and again on 6 May 2025, both instances in the urgent court. This is the third occasion upon which this application has been set down and taken up the time of a Judge in an extremely busy urgent court.

It is now approximately three weeks after the first hearing and three months since Bidvest froze the account.

There is no proper or cogent explanation from the applicant for the delays in this matter, other than the initial
10 inability to procure legal representation. That inability, however, came to an end when the applicant was able to secure his attorneys and to issue the application.

Nor does the applicant sustain the alleged prejudice and alleged hardship to him as the account is not his sole or primary account as alleged by him in his founding papers.

In the circumstances, this application does not qualify for enrolment on an urgent basis in terms of rule 6(12) of the uniform rules of court. The applicant will
20 receive substantial redress at a hearing in due course and this application stands to be struck for a lack of urgency.

As to the costs, an order for costs was granted previously by *Epstein AJ* on 6 May 2025. The first respondent argued that Bidvest is entitled to costs from the date of delivery of the first respondent's answering affidavit.

The second respondent also sought an order for costs on the attorney and client scale.

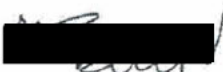
The respondents are entitled certainly to their costs in the following terms: the first respondent is entitled to its costs on a party and party scale from the date of the delivery of the first respondent's answering affidavit excluding the costs arising from the order by *Epstein AJ*.

The second respondent is entitled to its costs on a party and party scale.

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Accordingly, the application is struck from the roll with costs as set out herein above.

I hand down the judgment.


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CRUTCHFIELD, J

JUDGE OF THE HIGH COURT

20 DATE: 21 May 2025.