



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

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

SIGNATURE

DATE: 4/7/2025

CASE NO: 098194-2025

In the matter between:-

**OLYMPUS MOBILE (PTY) LTD
SOL ECOSYSTEM (PTY) LTD**

First Applicant
Second Applicant

and

ACCESS BANK SOUTH AFRICA LIMITED

Respondent

JUDGMENT

ALLEN AJ

INTRODUCTION

[1] This is an Opposed Urgent Application to compel respondent to reinstate the electronic funds transfer ("EFT") outward payment services in respect of the master services agreement concluded between the first applicant and respondent on or about 18 May 2016 ("MSA") within 24 hours of the court order. The first applicant also asks for an order interdicting the respondent from suspending or terminating any services rendered by it to the first applicant in terms of the MSA pending the elapsing of the termination period on 9 March 2026. In addition to its answering affidavit, respondent also filed a supplementary affidavit which was accepted.

THE FACTS

[2] The parties entered into various agreements such as a master services agreement, a commercial agreement, a product agreement, annexure H new products and services and EFT service level agreement,

[3] Second applicant gave first applicant a "business application mandate". First applicant hereafter opened a bank account for second applicant on 7 June 2021 confirming the account held with first applicant. The bank account details also stated that the bank is Olympus Mobile (Under License of Grobank Limited), the branch is Olympus Mobile, the type of account is a savings account, the account name is second respondent's name and the account number furnished by first applicant.

[4] Second applicant's sole director is Jonathan Holden who is also a director with Johann Mostert in first applicant. First applicant is a wholly owned subsidiary of second applicant.

[5] First applicant has with respondent a call account and a business savings account which also appears to be the pool account. Monies received by first applicant from clients are deposited with first applicant. First applicant further discloses to its clients that it is also "an authorized distribution channel of respondent". The account numbers furnished to first applicant's clients differs from the pool account held with respondent.

[6] On 10 March 2025 respondent gave first applicant notice in terms of the MSA, clause 12.2, to terminate the agreement on 12 months' notice. On 28 and 29 May 2025 respondent established that "there is a heck of a lot of tap and go transactions that happened since last night, apparently this appears to be fraudulent and needs to be investigated asap in order for the cards to be identified and stopped".

[7] Respondent communicated with Johann Mostert of first applicant in this regard. First applicant was informed that precautionary measures were implemented for the BIN where suspicious activity was identified and processing limits have been reduced to zero. On 30 May 2025 first applicant was requested certain information, shortly summarized as a list of all impacted customers, full details of all transaction attempts, confirmation whether all customers were contacted and their response as to fraudulent activity on their accounts, confirmation per customer fraud amounts and transactions and onboarding forms such as FICA documents. Respondent also requested the contact details of the card monitoring team and a summary of the fraud prevention and response process currently followed by first applicant.

[8] On 9 June 2025 first applicant was advised that the pool account was going into an overdrawn status and the EFT out limits will be reduced to R0 and the limit was set accordingly. First applicant was obliged to make payments, whether they disputed portions of the amount or not, in terms of the agreement between the parties. Respondent relies on the principle "pay now, fight later"¹. On 10 June 2025 first applicant was again requested for the information.

[9] A statement was also annexed to the 9 June 2025 correspondence which reads the customer name is Alliance Banking, the account title is Olympus Mobile, the account class is a business savings account. The account number is 20000442125 which shows an opening balance of R 2 517 599.45 and the closing balance of R 641 161.78 for the period 6 June 2025 to 9 June 2025. On 27 June 2025 the amount was R 4 382 156.10. The pool account number and first applicant's business savings account are the same account.

¹ Clause 8.6 of the MSA and clause 8.1.2 of the commercial agreement

[10] It is common cause that first applicant was always obliged to hold an amount in the pool account of approximately two times more than the value of the daily EFT processing limit to de-risk the doing of business with each other. On 19 December 2024 first applicant was advised that the pool balance needs to remain above R 5 M for the condition to apply and if not, the limit will be reduced immediately to 50% of the pool balance. On 28 January 2025 the request was to adjust the limit to R 2.5 M and on 4 March 2025 to R 5.5 M.

[11] On 13 February 2025 first applicant also raised an issue with the pricing structure of respondent and formally declared a dispute in terms of clause 15 of the MSA and nominated Jonathan Holden as representative of first applicant, director of second applicant. First applicant elected not to take the dispute further.

[12] On 6 May 2025 the respondent gave notice to the first applicant of a breach of the post termination terms of the MSA in that the first applicant has outstanding MasterCard fees which remained unpaid. In light hereof first applicant was notified of its breach to continue to fulfil its obligations during the termination period and was informed that the bank has no other recourse than to suspend the MasterCard service and first applicant to pay the outstanding fees within seven days, failing which the MasterCard service will be suspended. Invoices were also furnished to first applicant.

[13] On 2 June 2025 and 9 June 2025 correspondence followed regarding the termination of the MSA as a result of first applicant's refusal to pay the MasterCard fees and penalties timeously or at all. First applicant was given a 30-day period until 2 July 2025 to migrate all its customers to a new banking partner. In the same correspondence first applicant was also referred to the declared dispute of 13 February 2025.

[14] MasterCard fees is an issue since November 2023 and between March and December 2024 no progress was made and reached a deadlock position resulting in the 13 February 2025 dispute. Notwithstanding the deadlock, first applicant was to continue to make payments, which it failed to do, risking respondent's relationship with MasterCard.

[15] On 13 June 2025 Johann Mostert of first applicant replied to respondent and referred to liaising with respondent in November 2024 under ticket number 7917. He also responded: "We have no objection to keeping the BIN closed until the investigation is finalized". He further responded: "We do however require EFT functionality to be reinstated as a matter of urgency. EFT functionality is not available at present as our pool account has been debited by R 4 M since 30 May 2025 in relation to these suspicious card transactions".

[16] In correspondence it also emanated that on 28 May 2025 a significant number of cards that were previously closed, even in previous years, transactions were authorized where there were no funds available in the account. A representative, Rika, of first applicant reported to respondent that similar transactions were reported by first applicant since November 2024 which was not communicated to respondent. First applicant was informed that respondent does not have control over the cards and although these cards were closed, transactions still went through without debiting the balances of the account holders.

[17] On 13 June 2025 respondent was informed that first applicant's IT Department was asked to investigate the Olympus ticket system as well as a report requested for first applicant's cards mailbox. Since the November 2024 issue various correspondence followed between the parties in this regard culminating to the end of May, early June correspondence.

[18] On 20 June 2025 first applicant's attorneys sent an urgent letter in reply to the 2 June 2025 termination notice. In the letter, cancellation was disputed as a result of the termination notice of 10 March 2025 and first applicant does not accept the repudiation by respondent. In the same letter the October 2024 journal entries dispute was raised again and further debits that followed from 30 May 2025 onwards as a result of the fraudulent transactions still investigated.

[19] It is first applicant's contention that these amounts "cannot simply be allocated to our client" and "these journal entries should also be immediately reversed". In the same correspondence respondent was given until 10h00 23 June 2025 to withdraw the overdrawn notice and reactivate all EFT outward payments, to withdraw the termination notice and undertaking not to suspend or terminate any services rendered

until the expiry of the notice period (the 12 month period) failing which an urgent application will be brought.

[20] The second applicant made a confirmatory affidavit. Second applicant's involvement also revealed the following, namely: a client will open an account with second applicant for the issuing of cards (debit or credit) or wallets. Second applicant is a financial services provider. Second applicant in turn opened an account with first applicant in second applicant's name only. First applicant in turn has an account with respondent also in first applicant's name only.

[21] At the first hearing of the matter, it was standing down to discuss an interim arrangement for the benefit of both parties, to protect respondent against the admitted fraud and first applicant's access to the pool account. The latest proposal was for the first applicant to provide security to respondent in the amount of R5 000 000.00 with eight other conditions to protect respondent against fraud by first applicant's clients which first applicant did not accept.

[22] It is common cause that fraud was committed by first applicant's clients. Notwithstanding this fraud applicants approached this court on an urgent basis for the payout of EFTs whilst on respondent's calculations there are no monies in the pool account as the minimum balance was not maintained.

[23] Respondent initially gave a 12 month notice to cancel the MSA and additionally on 2 June and 9 June 2025 gave notice of termination as a result of the breach of payments during the termination period which first applicant was obliged to adhere to. Respondent only blocked the outgoing of funds via EFT, but the incoming of funds into the account remains open.

[24] Clause 15.2.1 of the MSA describes the dispute process failing which arbitration is the route to follow. Clause 15.3 sets out arbitration through AFSA. Clause 15.8.3 gives a party the option to approach a court only if a party prevents proceedings. Clause 15.11.3 states that a party can approach court for an urgent interdict notwithstanding arbitration. From the papers before me it is not disclosed what steps the first applicant has taken, if any, after it declared a dispute.

[25] In the case of *First Rand Bank Ltd v Spar Group Ltd* **2021 (5) SA 511 SCA** it was said once money is deposited into a bank account the bank becomes the owner thereof. In the scenario before me it is questionable whether second applicant, first applicant or respondent is the owner of the funds. In my view the owner of the funds is the ultimate holder thereof, namely respondent and the depositor first applicant only. It is not known whether the aforementioned at all relevant times was disclosed to clients.

[26] It is common cause that clients would open accounts with first applicant who administered the accounts on behalf of its clients. Respondent has no control or visibility over any account with first applicant until the onboarding process is complete. Funds are allocated to a client on first applicant's records and system only. The total value of money deposited is posted on respondent's core banking system. The nominated clearing control accounts are held by first applicant. First applicant and respondent then reconcile the clearing accounts after which the money is paid into a pool account in the name of first applicant. Respondent has therefore only access to the pool account and all accounts onboarded are managed and operated by first applicant.

[27] It is common cause that the clearing and settlement instructions are governed by the National Payment Systems Act, Act 78 of 1998 ("NPS"). The object of this Act is to manage systemic payment risk by failure of one or more settlement system participants to meet their payment obligations including the payment obligations of clearing system participants or their settlement obligations may result in any or all of the other settlement system participants being unable to meet their respective payment or settlement obligations. The South African Reserve Bank uses this Act to regulate and supervise the NPS ensuring its safety, soundness and efficiency and acts as an intermediary or settlement agent that enables financial institutions to make payments to each other. It also operates the South African Multiple Option Settlement (SAMOS) system and the Real Time Gross Settlement (RTGS) system. First applicant therefore cannot have unfettered access to outward EFT payments.

[28] First applicant was afforded an opportunity of 30 days until 2 July 2025 to migrate their clients which they did not do. Respondent reduced the outgoing payment

limit to zero during this 30-day period as a result of the pool account that became overdrawn. First applicant was to make payments which it never did, notwithstanding demand.

[29] Applicants allege that there are between R8 000 000.00 to R12 600 000.00 in the pool account, but no evidence was proffered to substantiate this allegation. On 25 June 2025 first applicant informed respondent that the pool account was R2 500 000.00 after the day's journals and requested reinstatement of the EFT with an out limit of R1 200 000.00 for the day. This was in reply to the email from respondent of 9 June 2025.

[30] On 26 June 2025 applicants' legal representatives were informed to arrange for a minimum balance of R5 000 000.00 in the pool account as well as to settle any amounts in excess of the minimum pool balance within 48 hours of the pool account reconciliation, amongst other proposals of payment of outstanding MasterCard penalties etc. which were not accepted.

[31] It is applicants' case that respondent applied set off and made journal entries whilst it is respondent's case that it simply processed payment in the ordinary course to MasterCard to prevent heavy penalties and set the outward EFT to R 0 as a result of not adhering to the minimum balance requirement.

URGENCY

[32] Predicated on the aforementioned applicants dragged their feet since 2 June 2025 before approaching court. On 25 June 2025 Johann Mostert of the first applicant was still corresponding with respondent making a further proposal, 23 days later. Applicants proceeded with this urgent application only after 26 June 2025. First applicant on 13 February 2025 declared a dispute. MasterCard penalties were imposed on 30 November 2023 and remain unresolved. The urgency requirement has not been met.

[33] In addition to applicant's application that lacks urgency applicant also do have an alternative remedy.

NO ALTERNATIVE REMEDY

[34] First applicant's alternative remedy is contained in clause 15 which first applicant elected not to proceed with since 13 February 2025 when it declared a dispute. On 26 June 2025 respondent proposed an alternative remedy of R5 000 000.00 to be kept in the pool account, payments within 48 hours etc. and at court there was a further proposed draft settlement of security for R5 000 000.00 amongst other conditions which was also not accepted.

IRREPARABLE HARM AND BALANCE OF CONVENIENCE

[35] For the sake of completeness, the balance of convenience favours respondent as the reactivation of the EFT outward payment service will result in further penalties by MasterCard for non-payment of the services and continued fraud which has to date not been analyzed, fully discovered and or prevented. Respondent as a participant in the NPS is required not to act in contravention of the Act. First applicant as alliance partner can similarly not act in contravention and equally so second applicant.

[36] Irreparable harm to applicants cannot be attributed to respondent. Clients contracted with second applicant only and others with first applicant only and none with respondent. From the construction before me, a client will have a claim against second applicant who in turn may have a claim against first applicant who in turn may have a claim against respondent. For the sake of completeness, a client lost ownership of its money when paying second applicant who in turn lost ownership of its money when paying first applicant who in turn lost ownership of its money when paid to the respondent. All monies paid into the pool account are in the name of first applicant and from the bank statement, no name of second applicant or any other client appears on it, entries included.

RELIEF SOUGHT

[37] Presumably I accept for a moment that the application is urgent, no alternative remedy available, balance of convenience and irreparable harm favours applicants

and I consider the relief sought in the form of a final interdict and a prohibitory interdict until 9 March 2026. It is common cause that there are disputes of fact. The material disputes of fact arising in these proceedings must therefore be determined according to the respondent's version of fact unless far-fetched or untenable.²

[38] The requirements for a final interdict have not been met namely a clear right, an injury actually committed or reasonably apprehended and the absence of any other satisfactory remedy to the applicants.³

[39] Applicants elected not to seek interim relief pending the resolving of the disputes where in that instance applicants' version of fact must be accepted unless the respondent's version causes serious doubt over it.⁴

² *Plascon-Evans Paints Ltd vs Van Riebeeck Paints Pty Ltd* **1984 (3) SA 623 (A)** on page 638C it was said: "The existence of disputes of fact does not, as I have indicated, necessarily preclude a final interdict being granted. The main consequence is simply that, in terms of the abovementioned general rule, where the affidavits in this case raise real and *bona fide* disputes of fact, the appellant is bound to accept the respondent's version of the facts" and at pp 634 and 635 held as follows: -

'It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances, the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or *bona fide* dispute of fact..... Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers ...'

See also *African Transformation Movement v Electoral Commission of South Africa and Others* 2025 JDR 0229 (EC)

³ *Setlogelo v Setlogelo* **1914 AD 221**

⁴ *ESKOM HOLDINGS SOC LTD v VAAL RIVER DEVELOPMENT ASSOCIATION (PTY) LTD AND OTHERS* **2023 (4) SA 325 (CC)** it was said: "[65] What the standard requires has given rise to no small measure of difference. According to *Webster v Mitchell* as qualified in *Gool* the test is whether the applicant has furnished proof which, if uncontradicted at trial (here in the review), would entitle the applicant to final relief. The court will then consider the case of the respondent to decide whether it casts serious doubt on the case of the applicant. If it does, the standard is not met. In *Ferreira* a majority of a full court considered this test to be too exacting. It held that the prospects of success of the claim for the principal relief, albeit weak, may nevertheless suffice. This is so because other requirements for the grant of an interim interdict may be strongly grounded and hence compensate for the weakness as to prospects. This, it was thought, better chimed with the holding in *Eriksen Motors*. More recently, this court, in *Economic Freedom Fighters* held that — 'before a court may grant an interim interdict, it must be satisfied that the applicant for an interdict has good prospects of success in the main review. The claim for review must be based on strong grounds which are likely to succeed. This requires the court adjudicating the interdict application to peek into the grounds of review raised in the main review application and assess their strength. It is only if a court is convinced that the review is likely to succeed that it may appropriately grant the interdict.' [Emphasis added.]

[66] What all of these cases make clear is that to secure interim relief an applicant must establish their prospects of success of obtaining final relief to the required standard. Without that showing, there is no basis upon which a respondent can be required to endure the strictures of an interim order, pending the final determination of the case for final relief. And, even if the standard is satisfied and the applicant is granted an interim order, the order is generally subject to the following condition. If the applicant ultimately fails in the main action, they will be liable for the damages that the respondent may have suffered as a result of the imposition of the interim order. This is a further demonstration of the manifest connection between the grant of interim relief and the likely outcome of the proceedings that will finally determine the matter.

[67] In sum, the following may be said of this account of our law. First, an application for interim relief is decided upon a consideration of the applicant's prospects of success in obtaining final relief. The *prima facie* right, though open to some doubt, that must be established to obtain interim relief is the right that is the subject of the main

[40] Applicants did not make out a case for the interdict in prayer 3 to compel respondent to keep the account open for unhindered access for a period of 12 months taking into account the disputes, MasterCard penalties, application of the NPS Act and fraud committed continuously on the accounts, etc.

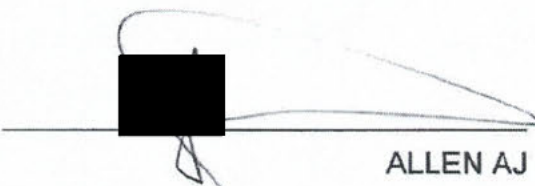
CONCLUSION

[41] On the facts before me the application stands to be struck from the roll with costs to follow the result.

ORDER

In the result I make the following order:

1. The application is struck from the roll for want of urgency.
2. Applicants to pay the costs, scale C, to include the costs of counsel.



ALLEN AJ
ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION JOHANNESBURG

This judgment was prepared by Acting Judge Allen. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to the electronic file of this matter on CaseLines, and by publication of the judgment to the

action (or proceedings). In the present case that is the Associations' right to the judicial review of Eskom's reduction decisions. Hence, an application for interim relief is never decided on some separate consideration of rights unrelated to the claim for final relief. As I shall show, the second judgment proceeds without sufficient regard to this fundamental precept. For this reason, I am in respectful disagreement with its approach. [68] Second, it is axiomatic that, if an applicant cannot prove that they have a clear right, the very nature of satisfying a court that they have a prima facie right, though open to some doubt, is a provisional judgment. The court that finally determines the matter will decide whether the right, that the applicant relied upon to secure interim relief, has been proven on a balance of probabilities so as to secure final relief. The second judgment cites a passage from the decision of this court in *National Gambling Board* to support the proposition that what is before us at this stage is about what must happen in the interim; what is to be decided by the reviewing court is left open for that court."

South African Legal Information Institute. The date for hand-down is deemed to be 4 July 2025.

HEARD ON: 3 July 2025

DECIDED ON: 4 July 2025

For the Applicants: Advocate A Redding SC
Instructed by Clyde & Co Inc.

For the Respondent: Advocate J.J. Meiring
Instructed by Lawtons Inc.