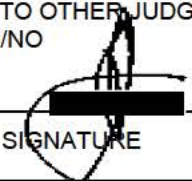


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 21295/22
149197/24

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
30.9.2025	
DATE	SIGNATURE

In the matter between:

FELARONA (PTY) LTD

Applicant

and

MINISTER OF FINANCE

First Respondent

TREASURY

Second Respondent

SOUTH AFRICAN RESERVE BANK

Third Respondent

SOUTH AFRICAN REVENUE SERVICE

Fourth Respondent

BIDVEST BANK LTD

Fifth Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 30 September 2025.

JUDGMENT

JANSE VAN NIEUWENHUIZEN, J

Introduction

[1] This is a review application brought in terms of section 9(2)(d) of the Currency and Exchanges Act¹ (the Act), read with Regulation 22D of the Exchange Control Regulations² (the Regulations). The applicant, firstly, seeks an order reviewing and setting aside the third respondent, the South African Reserve Bank (SARB)'s:

1.1 order on 23 February 2022 to the fifth respondent, Bidvest Bank Ltd (Bidvest) to block all funds standing to the credit of the applicant with Bidvest;

1.2 decision to convert all funds held in the blocked account from United States Dollars to South African Rands; and

1.3 decision to refuse to allow the amount of R 962 579.40 to be paid from the blocked account to the South African Revenue Services.

[2] Secondly, the applicant seeks an interdict directing and ordering the Financial Surveillance team (Finsurv) of SARB to do all that is necessary to have the blocked funds returned to the account and unfettered use of the applicant.

[3] Thirdly, the applicant seeks an order declaring that to the extent that Regulation 22A and Regulation 22C of the Regulations fail to comply with section 3(1), section 3(2) *alternatively* section 3(5) of the Promotion of Administrative Justice Act³ (PAJA), the Act and Regulations 22A and 22C are contrary to Section 33 of the Constitution and are accordingly, unconstitutional and invalid.

[4] The applicant has also re-enrolled an urgent application for an interdict that was heard by Lenyai J in the urgent court in January 2025. The urgent application will be dealt with in due course.

[5] The application is only opposed by SARB.

¹ 9 of 1933.

² GN R1111, 1 December 1961 and amended up to GN R445 GG 35430, 8 June 2012.

³ 3 of 2000.

REVIEW APPLICATION (21295/22)

Background

[6] The applicant is a marketing company which engages in online marketing and more specifically, e-mail advertising mainly on American online platforms. The applicant conducts business via the internet in various foreign countries and receives payment for its services in US Dollars. In order to receive foreign currency in South Africa, the applicant opened a foreign currency account with Bidvest.

[7] On 23 February 2022, Bidvest informed the applicant that the funds in its foreign currency account had been blocked by Finsurv. The blocking instruction was contained in email from Lenard Wissink (Wissink) of Finsurv to Jan Lombard of Bidvest, and the relevant portion reads as follows:

“Dear Jan

I hereby confirm that a duly authorised officer of the Financial Surveillance Department of the South African Reserve Bank has issued an order, in terms of the provisions of the Exchange Control Regulations 22A and/or 22C, whereby no person may withdraw or cause the withdrawal of, or appropriate in any manner any credit or balance, together with interest thereon and/or accrual thereto in respect of all funds standing to the credit of Felarona (Pty) Limited, with registration number..., at your institution.

The above order shall remain in force, until expressly uplifted by this Department.

. . .

The client may be advised of the blocking order, post the implementation thereof.”

[8] The applicant was, naturally, stunned by the blocking of its account and requested Jerry Botha (Botha), its tax consultant, to investigate the matter. The applicant’s tax return for provisional tax was due on 28 February 2022, and Botha requested Wissink to pay an amount equal to the applicant’s tax obligation directly to the fourth respondent, the South African Reserve Bank.

[9] Botha's efforts in resolving the blocking of the funds did not yield results, and on 7 March 2022, the applicant's attorney directed a letter to Wissink and his superior, Malherbe, requesting reasons for the blocking order. No meaningful response was received, and, on 10 March 2022, a follow-up letter was sent in which the following were requested:

- 9.1 a copy of the blocking order;
- 9.2 reasons why the order was issued;
- 9.3 reasons why Finsurv refused to release funds to SARS; and
- 9.4 reasons why the applicant was not, prior to the issuing of the order, given the opportunity to explain the origin and source of the funds.

[10] Wissink responded to the request in a letter dated 15 March 2022. The relevant portion of the response reads as follows:

"This Department is investigating alleged contraventions of the provisions of Exchange Control Regulations 2(4)(a) and/or 2(4)(b) and/or 10(1)(c) read with 22.

This Department is not under any obligation to release funds which were blocked in terms of the provisions of Exchange Control Regulation 22A and/or 22C to the South African Revenue Service nor to invite an individual prior to a blocking instruction to provide reasons why the funds in question must not be blocked.

We wish to point out that in terms of section 9(2)(g) of the Currency and Exchange Act (Act No. 9 of 1933) the funds can remain blocked for a period not exceeding 36 months, to conclude any investigation in this regard."

[11] Finsurv's refusal to engage with the applicant resulted in this application being issued on 13 April 2022.

SARB's response

[12] SARB, by way of background, explained that exchange controls are government-imposed limitations on the purchase and sale of foreign currency. The controls are used, *inter alia*, to ensure the stability of the economy and to prevent

exchange rate volatility. Exchange control is primarily governed by section 9 of the Act as read with the Regulations. The Regulations prohibit various transactions and are solely concerned with the capacity of prohibited conduct to influence total monetary demand.

[13] In ensuring that the total monetary demand remains stable, a designated functionary of Finsurv is authorized in terms of Regulations 22A and/or 22C to issue a blocking order in circumstances where the functionary, on reasonable grounds, suspects a person to be involved in a contravention of the Exchange Control Regulations. The blocking order preserves the funds during the ensuing investigation.

[14] A blocking order is issued at the beginning of an investigative process and expires after 36 months. During the investigation, but before the expiry of 36 months, Finsurv may, in accordance with Regulation 22B(1)(a), issue an order in writing in which it forfeits the funds to the State or may, or in accordance with Regulation 22B(2), return the funds and cancel the blocking order.

[15] I pause to mention that this matter was heard on 31 July 2025, some four months after the lapse of the blocking order on 22 February 2025. When the court raised the point of mootness, Mr van Huyssteen, counsel for the applicant, referred to an order issued by Lenyai J in the urgent application heard during January 2025, in terms of which the period of the blocking order was extended for a period of 90 days after the date on which the dispute in this application has been finally resolved.

[16] Returning to the merits of the matter, Finsurv listed the following reasons that informed its suspicion that the applicant's conduct of its account is in contravention of the Regulations:

16.1 the applicant's monthly turnover was suspiciously high for a company that had been in existence for a relatively short period, and it was furthermore in contradiction with the estimated turnover it declared when it opened the account with Bidvest, being R 100 000 to R 500 000 per month;

16.2 of all the applicants' beneficiaries, there were only agreements in place with three such beneficiaries for services rendered;

16.3 the applicant would receive large amounts of money for services rendered, which shortly thereafter, would be paid out, ostensibly, for services rendered;

16.4 there was no actual proof of services rendered, as the narratives contained in the relevant invoices were not sufficiently descriptive, and, furthermore, no proof had been provided of services rendered on a time and materials basis, as one would ordinarily expect;

16.5 the agreements which the applicant had provided appeared to be very standard, with no actual description of the services alleged to have been rendered;

16.6 there was no evidence of actual presence of any shareholder within the Republic.

[17] During the early stages of Finsurv's investigation into the conduct of the applicant, and on 21 February 2022, Lombard, from Bidvest, forwarded an Anti-Money Laundering (AML) - Enhanced Due Diligence report to Wissink. The report is detailed and consists of twelve pages. Lombard stated that the report contained certain discrepancies which indicate that some of the transactions are suspicious and unusual. Lombard requested an urgent block of the applicant's account.

[18] The informal request was followed by a formal application for a blocking order. The application confirmed the suspicion held by Finsurv and an interim statement was attached to the application for the period 31 December 2021 to 17 February 2022. The opening balance was USD 93 464.14 and significant amounts of money were, in a period of a month and a half, paid into and out of the account. On 17 February 2022, the closing balance was USD 2 237 866.41. The problem with the transactions on the account was insufficient documentation to verify the reasons for payments received and payments made.

[19] Wissink perused the documentation and agreed with Lombard that the transactions are suspicious. Wissink, thereupon forwarded the documentation to Mr Fransman, Manager of Compliance and Enforcement and the designated authority in the Finsurv department. Fransman considered the application and granted Wissink the requisite authority to proceed with the blocking order.

[20] SARB contends that the aforesaid process was valid and lawful.

Prayer 1: Blocking order

Legislative framework

[21] Regulations 2(4)(a), 2(4)(b) and 10(1)(c) are relevant for present purposes, and read as follows:

"(4) No person other than an authorised dealer shall –

- (a) use or apply any foreign currency or gold acquired from an authorised dealer for or to any purpose other than that stated in his application to be the purpose for which it was required; or
- (b) do any act calculated to lead to the use or application of such foreign currency or gold for or to any purpose other than that so stated."

and

"10(1) No person shall, except with permission granted by the Treasury and in accordance with such conditions as the Treasury may impose -

- (c) enter into any transaction whereby capital or any right to capital is directly or indirectly exported from the Republic."

[22] As stated above, once a designated authority in Finsurv harbours a suspicion formed on reasonable grounds that any or all of the aforesaid regulations have been contravened, such official may issue a blocking order in terms of Regulation 22A or Regulation 22C.

[23] Regulation 22D provides for the review of a blocking order on the grounds set out in section 9(2)(d)(i), which provides that a court shall not set aside a decision to issue a blocking order unless it is satisfied:

“(aa) that the person who made such decision or took such action did not act in accordance with the relevant provisions of the regulation; or

(bb) that such person did not have reasonable grounds to make such decision or to take such action; or

(cc) that such grounds for the making of such decision or the taking of such action no longer exist;”

Grounds of review:

Procedurally unfair

[24] Notwithstanding the aforesaid confined grounds of review, the applicant relies, as a ground of review, on the procedural unfairness of the decision. The applicant contends that it should have been afforded an opportunity to make representations before the decision to issue the blocking order was taken. In support of this ground of review, the applicant relies on *Armbruster and Another v Minister of Finance and Others*⁴ in which the Constitutional Court found that an affected person must be heard before a decision is taken by Treasury in terms of the Regulations.

[25] In *Armbruster*, a forfeiture order, in terms of Regulation 3(5) of the Regulations, in respect of foreign currency found in possession of the applicant, was issued. I pause to mention that the decision to seize the currency did not form the subject matter of the appeal. The Constitutional Court emphasized the distinction between the seizure of foreign currency and the decision to forfeit the seized currency:

“[40] First, the regulations draw a distinction between seizure and forfeiture. Regulation 3(3) provides for seizure while reg 3(5) is concerned with forfeiture. This implies that forfeiture is seen as something different from seizure. Any analysis that equates forfeiture and seizure would in my view be incorrect. Seizure is what happens when the currency is taken under reg 3(3). Regulation 3(5) provides that forfeiture of the seized items will follow. Forfeiture does not occur at the same time as the seizure

⁴ 2007 (6) SA 550 (CC).

but after the seizure has taken place. Regulation 3(5) expressly provides for 'currency seized' to be 'forfeited'.

[41] In addition, reg 3(5) further carves out a proviso to forfeiture. The proviso is to the effect that forfeiture will not occur in the circumstances covered by it: where the Treasury in its discretion directs return of the seized currency. As the Full Court correctly pointed out, reg 3(5) expressly provides for the return of seized currency, not forfeited currency. This again implies that forfeiture will not occur until the Treasury has determined whether or not to return the currency in terms of the proviso.

[42] Third, it must also be kept in mind that the decision to refund money seized is at odds with the idea that forfeiture had occurred immediately upon seizure. Forfeiture as a concept indicates finality. There cannot be incomplete forfeiture: an item is either forfeited or not. The suggestion of the third and fourth respondents that forfeiture is only completed when the decision whether to return what had been seized has been made, is accordingly contrary to the notion that forfeiture occurred immediately upon seizure.

[43] Finally, forfeiture immediately upon seizure is constitutionally objectionable. While it is understandable that foreign currency found to be in the possession of someone at the airport must be seized immediately, there can be no reason to justify forfeiture immediate upon seizure. Immediate forfeiture would mean that the property is forfeited without giving the person concerned an opportunity to be heard. The Legislature could not have contemplated this. In my view, regs 3(3) and 3(5) set in train a process. It begins with the seizure of foreign currency followed by a decision by the Treasury whether or not to return what had been seized and ends with forfeiture immediately that decision has been taken.”

[26] In the result, the issue decided in *Armbruster* was not authority for the applicant’s proposition that the decision by Finsurv to issue a blocking order is procedurally unfair.

[27] In *casu*, the Act and Regulations do not make provision for an affected person to be heard before a blocking order is issued. Having regard to the purpose of a blocking order, to wit; the preservation of the funds until an investigation into the

suspicious transactions has been concluded, an invitation to make representations prior to the issuing of the blocking order would risk defeating this very purpose.

[28] Any prejudice suffered by the applicant by not being heard prior to the issuing of the blocking order, is remedied by the applicant's right to immediately launch a review application, in terms of Regulation 22D, for the setting aside of the blocking order. Should a court find that any of the review grounds in section 9(2)(d)(i) avails the applicant, the blocking order shall be set aside.

[29] Procedural fairness is, furthermore, not a ground of review in terms of section 9(2)(d)(i) of the Act, and the applicant is bound to the grounds of review contained in the section.⁵

Section 9(2)(d)(i)

Fransman did not act in accordance with the relevant Regulations

[30] The applicant submitted that a blocking "order" was never issued by Fransman. According to the applicant, the blocking order is only referred to in Wissink's email to Lombard, but the order itself is not attached. The applicant had, on numerous occasions, requested a copy of the blocking order, but Finsurv has, thus far, failed to produce the blocking order.

[31] Without a blocking order, the blocking of the applicant's funds was not in accordance with the Regulations and stands to be reviewed and set aside.

[32] Finsurv pointed out that neither Regulation 22A nor Regulation 22C prescribe a specific format for the blocking order. On Wissink's request to Fransman for the issuing of a blocking order, Fransman responded that Wissink should proceed. Having regard to the request Fransman was responding to, it follows logically that Wissink should proceed with the issuing of the blocking order. Although Wissink did not mention Fransman's name in his email to Lombard, the fact that the blocking order was issued on the instructions of Fransman was not disputed by the applicant.

⁵ See: *South African Reserve Bank v Leathern N.O. and Others* 2021 (5) SA 543 (SCA) at para 9; Hoexter Penfold *Administrative Law in South Africa* 3 ed (Juta & Co Ltd, Cape Town 2021) at 835.

[33] Fransman stated that numerous blocking orders have in the past been issued in exactly the same manner in which the blocking order in *casu* has been issued. In the absence of a prescribed form for a blocking order, I am satisfied that such order was issued by Fransman.

Reasonable grounds

[34] In *Leathern N.O.*,⁶ the Supreme Court of Appeal endorsed the meaning of suspicion as formulated by Lord Devlin in *Shabaan Bin Hussein and Others v Chong Fook Kam and Another*,⁷ to wit:

“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; I suspect but I cannot prove. Suspicion arises at or near the starting point of an investigation of which the obtaining of *prima facie* proof is the end.”

[35] With the aforesaid definition in mind, the court held as follows at paragraph 16:

“Thus, all that was required of the Reserve Bank was a suspicion based on reasonable grounds, which had to be objectively assessed.”

[36] The applicant contended that Fransman did not form a suspicion that justified the issuing of the blocking order, but simply rubberstamped the suspicion harboured by Lombard. This allegation is refuted by Fransman’s evidence. The fact that Finsurv had a suspicion that something was untoward in respect of the applicant’s conduct of its account prior to Lombard’s e-mail, further gainsays the applicant’s allegation in this regard.

[37] Accepting that Fransman did form a suspicion which culminated in the issuing of the blocking order, the applicant submits that Fransman’s suspicion was not based on reasonable grounds. The details contained in Fransman’s answering affidavit point to the contrary.

⁶ Above n 5.

⁷ [1970] AC 942 (PC) ([1969] 3 All ER 1626) at 948B.

[38] Notwithstanding, the various grounds that informed Fransman's suspicion, the applicant stated that there is a simple explanation for each of the grounds and that Fransman's suspicion could therefore not have been reasonable. The applicant has, since the issuing of the blocking order, provided lengthy explanations in respect of each ground and has provided Finsurv with voluminous documents in support of the explanations.

[39] The applicant's stance that Fransman could not form a suspicion on reasonable grounds without having regard to all the documentation in the applicant's possession, is misguided. As explained by Lord Devlin, obtaining proof to either dispel or prove the suspicion is part of the investigation that follows the suspicion. In providing information, explanations and documents to Finsurv, the applicant assisted with the investigation, which at the end of the day, will result in a decision in terms of Regulation 22B to forfeit the blocked funds or to return the funds to the applicant.

[40] Having objectively considered the grounds that informed Fransman's suspicion when he took the decision to issue the blocking order, I am satisfied that the grounds are reasonable and justified the suspicion.

The grounds for issuing the blocking order no longer exist

[41] The applicant, relying on the wealth of information submitted to Finsurv subsequent to the blocking order, submits that Finsurv:

41.1 has confirmation that the applicant's business model operates exactly as indicated by the applicant in opening and operating the account;

41.2 has detailed explanations of the history of the operations of the applicant and of the nature, basis and origins of the funds;

41.3 has no evidence that the nature, basis and origin of the funds and payments are not what they purport to be and no evidence to ground any suspicion that they are not, and

41.4 despite being in possession of this evidence since at least late February 2022, and despite the vast resources of SARB, nationally and internationally, has not been able to furnish evidence, basis or grounds why the funds are tainted and why the funds should remain blocked for the 36 month period.

[42] This ground of review has been overtaken by events. On 25 November 2024, Finsurv issued a notice of intention to issue a forfeiture order in respect of the blocked funds. The applicant was requested to provide reasons why such order should not be issued. The question whether the documentation provided by the applicant to Finsurv is sufficient to uplift the blocking order will be best answered once the applicant has responded to Finsurv's notice.

Prayer 2 and 3: Conversion of funds from USD to ZAR and the refusal to allow the amount of R 962 579.40 to be paid to SARS

[43] The decisions to be reviewed do not fall within the ambit of Regulation 22D read with section 9(2)(d)(i) of the Act and there is, consequently, no legal basis to review the decisions.

[44] The withdrawal of funds from a blocked account may, in any event, and in terms of Regulation 22A(1)(b), only be done with Finsurv's permission. In response to the request to release funds to SARS, Finsurv responded as follows on 2 March 2022:

"We are currently unable to accede to the aforementioned request as the funds are the subject of an investigation. Bidvest Bank Limited was instructed by this Department to transfer the funds to a ring-fenced account to minimize the risk of withdrawal and / or adverse charges in the Rand Dollar exchange rate."

[45] Furthermore, SARB explained that the conversion of the funds from USD to ZAR is aimed at protecting the value of the currency, which is a constitutionally enshrined function of SARB pursuant to section 224(1) of the Constitution.

Interdict

[46] In view of the findings above, the interdict relief falls by the wayside.

Constitutional challenge

[47] After the close of pleadings, the applicant filed a Rule 16A notice and amended its notice of motion to include the constitutional challenge in respect of Regulation 22A and Regulation 22C. The applicant did not file a further affidavit in support of its constitutional challenge.

[48] This approach to a constitutional challenge is not countenanced by the courts. In *Prince v President, Cape Law Society, and Others*,⁸ the court held as follows:

“Parties who challenge the constitutionality of a provision in a statute must raise the constitutionality of the provisions sought to be challenged at the time they institute legal proceedings. In addition, a party must place before the Court information relevant to the determination of the constitutionality of the impugned provisions. Similarly, a party seeking to justify a limitation of a constitutional right must place before the Court information relevant to the issue of justification. I would emphasise that all this information must be placed before the Court of first instance. The placing of the relevant information is necessary to warn the other party of the case it will have to meet, so as allow it the opportunity to present factual material and legal argument to meet that case. It is not sufficient for a party to raise the constitutionality of a statute only in the heads of argument, without laying a proper foundation for such a challenge in the papers or the pleadings. The other party must be left in no doubt as to the nature of the case it has to meet and the relief that is sought. Nor can parties hope to supplement and make their case on appeal.”

[49] The applicant’s submission that the Rule 16A notice suffices for the purposes of raising a constitutional challenge is misguided. In *Phillips v South African Reserve Bank and Others*,⁹ the court explained the purpose of a Rule 16A notice as follows:

“Rule 16A(1)(i) has accordingly to be interpreted in the light of the purpose for which it was enacted, viz. to bring cases involving constitutional issues to the attention of persons who may be affected by or have a legitimate interest in such cases, so that they may take steps to protect their interests by seeking to be admitted as amici curiae

⁸ 2001 (2) SA 388 (CC) at para 22.

⁹ 2013 (6) SA 450 (SCA) at para 31.

with a view to drawing the attention of the court to relevant matters of fact and law to which attention would not otherwise be drawn.” (references omitted)

[50] Rule 16A(1)(i) clearly did not do away with the need to plead a constitutional challenge in the founding affidavit. The logic is patent, without pleading the constitutional challenge, a respondent does not have the opportunity to properly deal with the challenge in its answering affidavit.

Costs

[51] The third respondent was successful in opposing the relief claimed by the applicant and is entitled to its costs. The matter is of sufficient complexity to warrant the costs of counsel on scale C.

Order

1. The application is dismissed.
2. The applicant is ordered to pay the third respondent’s costs. Counsel’s fees on scale C.

URGENT APPLICATION (149197/24)

[52] Whilst the review was still pending, the blocking order would have expired on 22 February 2025. On 5 August 2024, the applicant received a letter from SARB’s attorneys requesting that the blocking order be extended by agreement, failing which SARB will bring a semi-urgent application to extend the period of the blocking order. SARB also indicated that it intends filing further documents in relation to the constitutional issue raised by the applicant. The applicant did not consent.

[53] SARB did not file any further documents. The applicant stated that it awaited the further documents prior to applying for a hearing date for the review. The applicant was also awaiting SARB’s semi-urgent application.

[54] Instead of filing papers and/or launching a semi-urgent application, SARB, on 25 November 2024, gave notice to the applicant of its intention to forfeit the applicant's funds. The applicant was afforded until 23 December 2024 to submit its representations.

[55] In order to avoid the necessity to bring an urgent application, the applicant's attorneys requested SARB that the time to make representations be extended to 31 January 2025. SARB refused the request but indicated that an extension until 7 January 2025 would be granted. Notwithstanding the extension, the applicant indicated, in its founding affidavit in the urgent application, that it is unable to completely formulate its representations until the review has been finally determined.

[56] In the meantime and on 12 December 2024, the applicant's attorneys requested SARB to provide an undertaking that it will not proceed to make any declaration of forfeiture until the final determination of the pending application. The request was refused by SARB on 13 December 2024. A further request by the applicant on 13 December 2024 was similarly refused by SARB on 17 December 2024.

[57] This refusal prompted the applicant to issue the urgent application on 19 December 2024. The application was heard on 28 January 2025.

[58] The applicant claimed the following relief in the urgent application:

- “2. Interdicting and restraining the Third Respondent from:
 - 2.1 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 25 November 2024 addressed to the Applicant (“the forfeiture notice”); and
 - 2.2 Making any decision in respect of the forfeiture notice;pending the final determination of case number 21295/2022 of the above Honourable Court.
3. Reserving the costs of the application.”

[59] SARB opposed the application and filed a conditional counter-claim, claiming the following relief:

“1. To the extent that dismissal of the urgent Application is declined by the Court, directing that, 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 time period 90 (ninety days) after the date on which the dispute in the Pending Review is finally resolved.”

[60] On 5 February 2025, Lenyai J struck the applicant’s application from the roll for lack of urgency and ordered the applicant to pay costs on an attorney and client scale. An order was granted in terms of the relief claimed in SARB’s counter-application and costs of the counter-application were reserved.

Merits of the urgent application.

[61] The relief claimed by the applicant is fatally flawed.

[62] The relief entails that SARB is interdicted from forfeiting the funds until the final determination of the pending review application. A date for the hearing of the pending review was not yet allocated at that stage, and the pending review would not have been “*finally determined*” prior to 22 February 2025.

[63] Absent an order extending the duration of the blocking order and in terms of the provisions of Regulation 22A(3) and Regulation 22C(3)(b), failure by SARB to order the forfeiture of the funds prior to 22 February 2025, meant that the funds had to be returned to the applicant. The applicant was alerted to the defective relief claimed in its notice of motion but failed to amend the relief. The applicant made a vague tender in its replying affidavit that such relief could be included in an appropriate order.

[64] It is trite that a party is bound by its pleadings, *in casu*, the relief claimed in the notice of motion, and that a case for the relief should be made out in the applicant’s founding affidavit.

[65] Should the relief claimed by the applicant be granted, SARB will be deprived by an order of court from exercising the powers conferred on it by the Act and the Regulations. In view of the separation of powers principle, a court should not, save in exceptional circumstances, interfere with the powers conferred by legislation on the executive.

[66] This principle was aptly summarised in *Doctors for Life International v Speaker of the National Assembly and Others*:¹⁰

“The constitutional principle of separation of powers requires that other branches of government refrain from interfering in parliamentary proceedings. This principle is not simply an abstract notion; it is reflected in the very structure of our government. The structure of the provisions entrusting and separating powers between the legislative, executive and judicial branches reflects the concept of separation of powers. The principle 'has important consequences for the way in which and the institutions by which power can be exercised'. Courts must be conscious of the vital limits on judicial authority and the Constitution's design to leave certain matters to other branches of government. They too must observe the constitutional limits of their authority. This means that the Judiciary should not interfere in the processes of other branches of government unless to do so is mandated by the Constitution.” (footnotes omitted)

[67] In the result, the application stands to be dismissed.

Costs

[68] SARB is entitled to a costs order in its favour and requested that such be granted on an attorney and client scale because the applicant made itself guilty of the very conduct denounced in *Khunou and Others v Fihrer & Son (Pty) Ltd and Others*:¹¹

“Unfortunately this concomitant brings in its train the opportunity for unscrupulous litigants and those who would wish to delay or deny justice to so manipulate the Courts' procedures that their true purpose is frustrated. Courts must be ever vigilant against this and other types of abuse.”

¹⁰ 2006 (6) SA 416 (CC) at para 37.

¹¹ 1982 (3) SA 353 (W) at 356A.

[69] Although misguided, the applicant's conduct in launching the application does not fall within the category of the litigants described in *Khunou*.

[70] The complexity of the issues raised in the application justifies counsel's fees on scale C.

Conditional counter-application: costs

[71] The parties are *ad idem* that SARB did not move for an order in terms of the conditional counter-claim. The court granted the order of its own accord. In the result, the parties suggested that each party pay its own cost. In my view, the suggestion is imminently fair and reasonable.

Order

1. The application is dismissed.
2. The applicant is ordered to pay the third respondent's costs. Counsel's fees on scale C.
3. The applicant and third respondent to pay their own costs in the counter-application.

A handwritten signature in black ink, appearing to read 'N Janse van Nieuwenhuizen', is written over a solid black rectangular redaction box. The signature is cursive and somewhat stylized.

N JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of hearing: 31 July 2025

Date judgment delivered: 30 September 2025

Appearances:

Applicant: Adv KJ van Huyssteen

Instructed by: Fluxmans Inc.

Third Respondent: Adv MD Stubbs

Instructed by: GMI Attorneys