



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

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

13 October 2025
Date

K. La M Manamela

CASE NO: 2022-012498

In the matter between:

CHRISTIAAN TIELMAN GROVÉ
and
THE MINISTER OF FINANCE NO
THE SOUTH AFRICAN RESERVE BANK
KUBEN NAIDOO NO
ELIJAH MAZIBUKO NO
ANDRE MALHERBE NO

Applicant

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent

CASE NO: 2024-114389

In the matter between:

CHRISTIAAN TIELMAN GROVÉ
and
THE SOUTH AFRICAN RESERVE BANK
THE GOVERNOR OF THE SOUTH AFRICAN
RESERVE BANK N.O.
THE DEPUTY GOVERNOR OF THE SOUTH AFRICAN
RESERVE BANK N.O.

Applicant

First Respondent
Second Respondent

Third Respondent

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge's secretary. The date of the judgment is deemed to be 13 October 2025.

JUDGMENT

Khashane Manamela, AJ

A : INTRODUCTION

A1: General

[1] This judgment concerns two applications¹ brought by Mr Christiaan Tielman Grové, essentially against the South African Reserve Bank (‘SARB’) and its senior or governance functionaries, as fully reflected above. The applicant was a former employee of SARB before he left its employ to join a company within the Steinhoff Group.² The applicant retired from the latter on medical grounds. The issues relevant to the two applications concern activities or transactions which occurred when the applicant was with Steinhoff Group.

[2] In the first application (under case number 2022-012498) the applicant seeks – in terms of Regulation 22D³ of the Exchange Control Regulations⁴ - an order setting aside the decision to attach his immovable and movable properties, including funds to his credit held in a bank account, as it is unlawful (‘the Review’). The Review includes the Minister of Finance, as the first respondent, sued in his capacity as the responsible Minister for exchange control in South Africa (‘SA’). SARB is cited as the second respondent. The impugned decision(s) is/are those of SARB and/or its Deputy Governor and/or other senior functionaries occupying positions within SARB, cited as third to fifth respondents in the Review.

[3] In the second application (under case number 2024-114389) the applicant sought to interdict a forfeiture he thought was imminent by SARB, but the application has since been withdrawn and the only issue remaining for determination is the liability for costs (‘the Forfeiture Interdict’).

¹ A layout or table of contents is included under par [6] to provide a quick guide on locating joint and separate material relating in the two applications.

² Pars [11]-[13] on SARB, pars [20]-[21] on the Steinhoff Group and pars [42]-[53] on facts in the background to this matter.

³ Par [34] below on Regulation 22D.

⁴ Pars [24]-25] below on the Exchange Control Regulations, generally.

[4] Both applications are opposed by the second to fifth respondents ('the respondents'), save for the Minister. The applications came before the Court for hearing as special or third court motions on 10 and 11 June 2025 when Mr P Ginsburg SC and Mr KD Iles appeared for the applicant, and Mr NGD Maritz SC and Mr M Stubbs appeared for the respondents. I reserved judgment on 11 June 2025 in both applications, after listening to oral submissions by counsel. The judgment also benefitted from the comprehensive written argument by counsel. I am grateful to counsel in this regard.

A2: Layout or table of contents in the two applications

[5] Although the applications relate to distinct decisions of SARB and/or its functionaries, the facts in the applications are interlinked as the decision in the Review somewhat triggered that in the Forfeiture Interdict. And I am stating this only superficially. Also, the legal principles applicable to the issues in the applications are similar or of similar origin.

[6] For these reasons, I considered it proper to write a single judgment and table 6.1 below provide a layout or table of contents for quick guide on locating material in the judgment, particularly in areas of divergence.

Table 6.1: Layout or table of contents of the material in the Review and Forfeiture Interdict

<i>Item</i>	<i>Paragraphs</i>	<i>Issue</i>	<i>Review</i>	<i>Forfeiture Interdict</i>
1.	1-22	<i>A: INTRODUCTION</i>	✓	✓
2.	23-41	<i>B: APPLICABLE STATUTORY PROVISIONS AND OTHER LEGAL PRINCIPLES</i>	✓	✓
3.	42-53	<i>C : BRIEF BACKGROUND OR CHRONOLOGY OF THE MATERIAL FACTS</i>	✓	✓
4.	54-105	<i>D: THE REVIEW</i>	✓	
5.	106-115	<i>E: FORFEITURE INTERDICT</i>		✓
6.	116-117	<i>F: ORDER</i>	✓	✓

A3: Applicant's additional affidavit and amendment to the notice of motion

[7] The applicant delivered an additional supplementary affidavit after the replying affidavit. He says this was precipitated by SARB in July 2023 blocking funds in credit in his bank accounts purporting to act in terms of Regulation 22C. The applicant seeks leave of the Court for the admittance into evidence of the additional affidavit and appeal to the Court to apply a measure of flexibility from strict adherence to the rules governing the number and proper sequence of affidavits.⁵ The respondents have since filed a response to the applicant. I allowed the hearing to proceed on the basis of all affidavits filed, as I considered it in the interests of justice. The admittance of the supplementary affidavit required or caused an amendment of the notice of motion to introduce an additional prayer for the setting aside of the blocking order made by SARB in July 2023. Therefore, I formally allow the consequential amendment of the notice of motion as indicated. I am not aware or have not been made aware of any prejudice caused or likely to be caused by the additional affidavit(s) and/or amendment on the part of the respondents.

A4: Main characters or role-players in these applications or matters

General

[8] The two major role-players in both applications are the applicant and SARB. The majority of the respondents (i.e. third to fifth respondents) are the functionaries of SARB. In the Review, they are identified by names. The Forfeiture Interdict excluded some of the respondents and used office titles.

[9] As the origin of the subject matter(s) in the two applications is the applicant's role as an employee or functionary of one of the companies in the Steinhoff group (according to him)

⁵ *James Brown & Hammer (Pty) Ltd (Previously named Gilbert Hamer & Co Ltd) v Simmons*, NO 1963 (4) (SA) 656 at 660E-G.

and by or in respect of the entire Steinhoff Group (according to the respondents), there is a need to consider – albeit superficially – some of the companies in the Steinhoff Group. The applicant’s diagrammatic structure of the Steinhoff group included in the founding papers may be a useful aid in this respect.

[10] In addition to the different role-players, a number of Exchange Control Regulations are cited as relevant to the determination of the Review and the Forfeiture Interdict. The Exchange Control Regulations – as the subject matter underpinning the issues requiring determination - are extensively quoted under the part on applicable legal principles below.⁶ But under this part the purpose of the Exchange Control Regulations is highlighted, after the introduction of the different role-players.

South African Reserve Bank (i.e. SARB)

[11] The South African Reserve Bank (i.e. SARB), cited as the second respondent in the Review and the first respondent in the Forfeiture Interdict, was established in terms of section 9 of the Currency and Banking Act 31 of 1920. Further, SARB is governed by the Constitution of the Republic of South Africa, 1996 (‘the Constitution’) and South African Reserve Bank Act 90 of 1989 (‘the SARB Act’). It is recognised as the central bank of South Africa in terms of section 223 of the Constitution.

[12] According to section 3 of the SARB Act, the primary objective of SARB is ‘to protect the value of the currency of the [Republic of South Africa] in the interest of balanced and sustainable economic growth in the [Republic of South Africa]’.⁷ This is precisely what is stated by the Constitution as the primary object of SARB.⁸ Additionally, SARB carries the

⁶ Pars [11]-[16] below.

⁷ Section 3(1) of the SARB Act.

⁸ Section 224(1) of the Constitution

responsibility ‘for protecting and maintaining financial stability as envisaged in the Financial Sector Regulation Act, 2017’.⁹

[13] SARB is governed by a board of directors consisting of, among others, a Governor and three Deputy Governors, appointed by the President of South Africa after consultation with the Minister of Finance (‘the Minister’) and the board of SARB.¹⁰ The functions and powers of SARB’s board of directors (‘the Board’) include: (a) being responsible for SARB’s corporate governance; (b) exercising all other powers and duties of SARB in terms of the SARB Act, which powers and duties ‘shall vest in and be exercised by the Governor and Deputy Governors’.¹¹ The third respondent, Mr Kuben Naidoo (as cited specifically by name in the Review) is the Deputy Governor of SARB.

Financial Surveillance Department of SARB

[14] Although it is a constituent part of (or a department within) SARB, the Financial Surveillance department (‘FinSurv’) and, therefore, not a juristic person in own name, FinSurv played a distinctive role in this matter and is mostly referred directly by the parties. It may be useful to introduce it as one of the main role-players in these matters.

[15] FinSurv is tasked with the responsibility of the administration of the exchange control in the country, including investigation of alleged contraventions of the Exchange Control Regulations. This is in terms of the delegated functions (to SARB, generally, and to FinSurv, in particular) by the Minister, as envisaged in Regulation 22E¹² of the Exchange Control

⁹ Section 3(2) of the SARB Act. The preamble to the Financial Sector Regulation Act, 2017 states, among others that it is meant to ‘establish a system of financial regulation by establishing the Prudential Authority and the Financial Sector Conduct Authority, and conferring powers on these entities; to preserve and enhance financial stability in the Republic by conferring powers on the Reserve Bank’.

¹⁰ Section 4 of the SARB Act.

¹¹ Section 4A of the SARB Act.

¹² Par [35] below.

Regulations. SARB, mainly through FinSurv, is responsible for the day-to-day administration of exchange controls.

[16] The fourth respondent, Mr Elijah Mazibuko is cited in his capacity as the head of FinSurv at the material times. And the fifth respondent, Mr Andre Malherbe, is the Manager: Compliance and Enforcement Division of FinSurv at the material times. He is the deponent to the affidavits filed by the respondents with the Court in the Review.

Mr Christiaan Tielman Grové (i.e. the applicant)

[17] The applicant is a retired employee of Steinhoff Africa Holdings (Pty) Ltd ('SAH'). He says that he was employed by SAH from 1 November 2007 until 1 July 2019, when he retired on medical grounds. Before joining SAH he was employed by SARB in its then Exchange Control department where he rose from being a clerk to the position of Deputy General Manager by the time he took early retirement in October 2007.

[18] At SAH the applicant was a compliance and advisory services manager with responsibilities for the entire Steinhoff Group's risk management, group insurance and advisory services. His job functions included liaising with SARB and applying for approvals, due to his previous work experience at SARB. It is argued on behalf of the respondents that the applicant – on reasonable grounds is believed – to have had knowledge and experience of the laws and regulations governing exchange control of South Africa, which knowledge and experience informed SARB's designated functionary's evaluation of the reasonableness of the suspicion that the applicant contravened the Regulations. I hasten to reject this contention as it is devoid of a factual or legal basis.

[19] The applicant was employed throughout by SAH, a company resident in SA. But, it is common cause that his work required of him to travel extensively outside of SA. According to the applicant he rendered services to Steinhoff overseas companies under a consultancy

agreement. But, for purposes of this matter or applications, the applicant says his role was limited to performing his employer task of obtaining approval from SARB for the proceeds of the listing of Steinhoff Africa Retail Limited ('STAR') to be paid or transferred offshore. He sought SARB's approval on 26 September 2017, which was granted by FinSurv. But, it is common cause that by that time payment of part of the proceeds from the listing of STAR had occurred. The applicant concedes that he did not tell FinSurv that the first tranche of the payment had by then already left the country.

Steinhoff Group

[20] A few of the entities in the Steinhoff group of entities are relevant for the purposes of these applications. The Steinhoff Group is conveniently referred to as a 'Group' without regard to the real or imputable position in respect of shareholding or control between or amongst the companies and the entities.

[21] As stated above, the applicant, was employed by SAH, although his functions or responsibilities stretched across the entire Steinhoff Group. And, as already indicated, the company whose listing proceeds (or part thereof) were repatriated or paid offshore is Steinhoff Africa Retail Limited ('STAR'). The payment was made by Steinhoff Investment Holdings Limited ('Steinhoff Investment') to Steinhoff International Holdings NV ('SIHNV'). SIHNV is an offshore entity in the Steinhoff group. It was designated - in terms of the pre-listing statement of STAR, approved by SARB - as the entity that would receive the listing proceeds as a dividend upon its declaration. There are other entities in the Steinhoff Group.

[22] There may be additional role-players whose role has a bearing on the issues for determination and, therefore, the outcome of these applications. They will be introduced immediately they show up in the discussion.

B : APPLICABLE STATUTORY PROVISIONS AND OTHER LEGAL PRINCIPLES

B1: General

[23] Both applications concern alleged contravention of the Exchange Control Regulations and the legislation upon which they are pivoted. Therefore, the provisions and legal principles relating to these regulatory instruments will be quoted in greater detail under this part. Other legal principles feature later in the discussion in addition to those referred to under this part.

B2: Exchange Control Regulations

[24] The Exchange Control Regulations (henceforth ‘the Regulations’) were promulgated in terms of section 9 of the Currency and Exchanges Act 9 of 1933 (‘CEA’). Of current importance, section 9(2)(d)(i) or (iii) of the CEA provides for the review or ‘revision’ and setting aside of the action taken or decision made pursuant to the Regulations.

[25] Exchange controls constitute limitations imposed by the government of SA on the purchase and sale of foreign currencies in order to ensure the stability of the economy and oust exchange rate volatility. The impugned attachment of the assets of the applicant is said to have been effected in terms of Regulation 22C(1), set out below.¹³ The Review is on the basis that the Deputy-Governor of SARB, cited as the third respondent, either did not hold a suspicion that the applicant had contravened the Regulations at all or, if it is found that he did, such suspicion was not reasonable. Other Regulations have been cited or form part of the discourse. They will be referred to below to the extent necessary.

[26] Regulation 2 reads as follows, together with its caption, in the material part:

2 Restriction on purchase, sale and loan of foreign currency and gold

(1) Except with permission granted by the Treasury, and in accordance with such conditions as the Treasury may impose, no person other than an authorised dealer shall buy or borrow any foreign currency or any gold from, or sell or lend any foreign currency or any gold to any person not being an authorised dealer.

¹³ Par [32] below.

(2)(a) An authorised dealer shall not buy, borrow or receive or sell, lend or deliver any foreign currency or gold except for such purposes or on such conditions as the Treasury may determine...

[27] Regulation 3 reads as follows, together with its caption, in the material part:

3 Restriction on the export of currency, gold, securities, etc, and the import of South African bank-notes

(1) Subject to any exemption which may be granted by the Treasury or a person authorised by the Treasury, no person shall, without permission granted by the Treasury or a person authorised by the Treasury and in accordance with such conditions as the Treasury or such authorised person may impose-

...
(d) draw or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) on the part of such person or any other person to receive a payment in the Republic is created or transferred as consideration-

(i) for the receiving by such person or any other person of a payment or the acquisition by such person or any other person of property, outside the Republic; or

(ii) for a right (whether actual or contingent) on the part of such person or any other person to receive a payment or acquire property outside the Republic;
or make or receive any payment as such consideration ...

[28] Regulation 6 reads as follows, together with its caption, in the material part:

6 Acquisition by the Treasury of foreign currency

(1) ...

(2) Every person resident in the Republic who becomes entitled to assign or to procure the assignment of any right to receive outside the Republic, in respect of any credit or of any balance at a bank, payment of any amount in a foreign currency shall, within thirty days after becoming so entitled, make or cause to be made, a declaration in writing of such right to the Treasury or to an authorised dealer.

(3) Any person who has, in terms of subregulation (1) or (2), made a declaration in writing to the Treasury or to an authorised dealer, shall be deemed to have offered such foreign currency or such right, as the case may be, for sale to the Treasury or to such authorised dealer and the Treasury or such authorised dealer may purchase such foreign currency or such right at a price which, in the case of foreign currency, shall not be less than the market value of that currency on the day of purchase and, in the case of a right, shall be such as the Treasury may fix.

(4) ...

(5) No person who is entitled (whether actually or contingently) to receive a payment in a foreign currency shall, except with permission granted by or on behalf of the Treasury and in accordance with such conditions as may be imposed by the Treasury or on its behalf do, or refrain from doing, any act with intent to secure that-

(a) the receipt by him of the whole or any part of the payment in such currency is delayed;

(b) the payment ceases, in whole or in part, to be receivable by him or receivable in that currency;

(c) the contingency on which the right to receive payment as aforesaid is dependent (including the declaration of a dividend or profit by a company in which such person has an interest), does not eventuate.
(6) ...

[29] Regulation 10 reads as follows, together with its caption, in the material part:

10 Restriction on export of capital

(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.

[30] Regulation 10(1)(c) is said to be consistent with the purpose of SARB as held by the Constitutional Court as one of the legislative scheme's core provisions.

[31] Regulation 22A deals with the blocking or attachment of the so-called 'tainted' goods and money (i.e. goods and money which may be the subject of a contravention of the Regulations). It reads as follows, together with its caption, in the material part:

22A Attachment of certain money and goods, and blocking of certain accounts

(1) Subject to the provisions of the proviso to subparagraph (i) of paragraph (b) of section 9(2) of the Act, the Treasury may in such manner as it may deem fit-

(a) attach-

(i) any money or goods, notwithstanding the person in whose possession it is, in respect of which a contravention of any provision of these Regulations has been committed or in respect of which an act or omission has been committed which the Treasury on reasonable grounds suspects to constitute any such contravention, or, in the case of such money or any part thereof which has been deposited in any account, an equal amount of money which is kept in credit in that account, and shall, in the case of money attached, deposit such money in an account opened by the Treasury with an authorised dealer for such purpose, and may, in the case of goods attached, leave such goods, subject to an order issued or made under paragraph (c), in the possession of the person in whose possession such goods have been found or shall otherwise keep or cause it to be kept in custody in such manner and at such place as it may deem fit;

(ii) any money or goods, notwithstanding the person in whose possession it is-

(aa) which the Treasury on reasonable grounds suspects to be involved in a contravention of any provision of these Regulations or in a failure to comply with any such provision, or which the Treasury on reasonable grounds suspects to be involved in any act or omission which the Treasury so suspects to constitute a contravention of any such provision or a failure to comply with any such provision;

(bb) which have been obtained by any person or are due to him, whether by virtue of any personal right or otherwise, and which would not have been obtained by him

or would not have been due to him if any such contravention or failure or any such act or omission had not been committed;

(cc) by which any person has been benefited or enriched as a result of any such contravention or failure or any such act or omission,

or, in the case of such money or any part thereof which has been deposited in any account, an equal amount of money which is held in credit in that account, and shall, in the case of money attached, deposit such money in an account referred to in subparagraph (i), and may, in the case of goods attached, leave such goods, subject to an order issued or made under paragraph (c), in the possession of the person in whose possession such goods have been found or shall otherwise keep or cause it to be kept in custody in such manner and at such place as it may deem fit;

(iii) any money or goods, notwithstanding the person in whose possession it may be, into which money or goods referred to in subparagraph (i) or (ii) have been transformed, including any personal right obtained with money or goods referred to in subparagraph (i) or (ii), or, in the case of such money or any part thereof which has been deposited into any account, an equal amount of money which is held in credit in that account and shall, in the case of money attached, deposit such money in an account referred to in subparagraph (i), and may, in the case of goods attached, leave such goods, subject to an order issued or made under paragraph (c), in the possession of the person concerned in whose possession such goods have been found or shall otherwise keep or cause it to be kept in custody in such manner and at such place as it may deem fit;

(iv) any money which is held in a blocked account referred to in regulation 4 and which the Treasury on reasonable grounds suspects to be money-

(aa) in respect of which a contravention or act or omission referred to in subparagraph (i) has been committed;

(bb) which has been involved in a contravention or failure or act or omission referred to in subparagraph (ii)(aa);

(cc) which has been obtained by any person or is due to him as referred to in subparagraph (ii)(bb);

(dd) by which any person has been benefited or enriched as referred to in subparagraph (ii)(cc);

(b) if the Treasury on reasonable grounds suspects that money referred to in paragraph (a) has been deposited in any account and if it has not been attached under the said paragraph (a), issue or make an order in such manner as it may deem fit in or by which any person is prohibited to withdraw or cause to be withdrawn, without the permission of the Treasury and in accordance with such conditions (if any) as may be imposed by the Treasury, any money in that account or not more than an amount determined by the Treasury, or to appropriate in any manner any credit or balance in that account, notwithstanding who may be the holder thereof;

(c) in the case of goods referred to in paragraph (a) which have been left in the possession of the person concerned, issue or make an order in such manner as it may deem fit in or by which any person is prohibited to deal, without the permission of the Treasury and in accordance with such conditions (if any) as may be imposed by the Treasury, in any manner determined by the Treasury with the goods attached or any part thereof....

[32] Regulation 22C, on the other hand, deals with the blocking or attachment of ‘untainted’ money to the value of the contravention perpetrated by the exporting of ‘tainted’ money. Both

applications appear to concern ‘untainted’ money and goods. Regulation 22C reads as follows, together with its caption, in the material part:

22C Recovery of certain amounts by Treasury

(1) When the Treasury has, under regulation 22B, forfeited to the State money or goods referred to in paragraph (a), (b) or (c) of regulation 22A(1) and such money and the proceeds of the realisation of such goods, if any, are less than an amount equal to an amount-

(a) in respect of which a contravention or failure or act or omission referred to in subparagraph (i) of regulation 22A(1)(a) has been committed;

(b) which was involved in a contravention or failure or act or omission referred to in subparagraph (ii)(aa) of that regulation;

(c) which has been obtained by any person or is due to him as referred to in subparagraph (ii)(bb) of that regulation;

(d) by which any person has been benefited or enriched as referred to in subparagraph (ii)(cc) of that regulation,

or when no money or goods have been forfeited for the State under the said regulation 22B, the Treasury may recover an amount equal to the difference between the last-mentioned amount and the first-mentioned amount of money and proceeds or an amount equal to the last-mentioned amount, as the case may be-

(i) from the person who committed the contravention or failure or act or omission in question;

(ii) from the person who the Treasury on reasonable grounds suspects to have committed the contravention or failure or act or omission in question;

(iii) from the person benefited or enriched as a result of the contravention or failure or act or omission in question;

(iv) if more persons have committed the contravention or failure or act or omission in question or if the Treasury on reasonable grounds suspects that more persons have committed any such contravention or failure or act or omission or if more persons have been benefited or enriched as a result of the contravention or failure or act or omission in question, separately and jointly from those persons, by attaching in such manner as it may deem fit any other money, including money in a blocked account referred to in regulation 4, or other goods of the person or persons concerned.

(2) The Treasury may, if it on reasonable grounds suspects that it will be necessary in due course to recover under subregulation (1) any amount from the person or persons concerned, at any time on or after the date on which money or goods referred to in paragraph (a) of regulation 22A(1) have or could have been attached, issue or make an order in such manner as it may deem fit in or by which any person is prohibited ...

[33] According to the applicant the attachment of his assets was effected in terms of Regulation 22C(1). It is pointed out that the purpose of an attachment order in terms of the Regulations is to secure assets so that they, subsequently, may be subject of a forfeiture order in terms of Regulation 22B, which reads as follows, together with its caption, in the material part:

22B Forfeiture and disposal of money or goods attached or in respect of which orders have been issued or made

(1) Subject to the provisions of subregulation (3), the Treasury may issue an order in writing in which it forfeits to the State any money or goods referred to in paragraph (a), (b) or (c) of regulation 22A(1), including any money or goods accrued therefrom, and shall-

(a) in the case of money, deposit such money into the National Revenue Fund; and

(b) in the case of goods, realise such goods in such manner as it may deem fit as if it is the owner or holder thereof, and may transfer such goods to the purchaser and give a valid title thereto and, in the case of immovable goods, without submitting to the registrar of deeds the title deeds thereof, provided it is certified by the Treasury that the Treasury has been unable to obtain those title deeds.

(2) ...

(3) The Treasury shall not forfeit to the State any money or goods referred to in paragraph (a), (b) or (c) of regulation 22A(1), unless it-

(a) has published a notice in the *Gazette* in which-

(i) notice is given of any decision to forfeit to the State money or goods specified in such notice;

(ii) particulars are furnished of the manner in which such forfeited money or goods will be disposed of; and

(iii) the date (which may be the date of the notice) on which the money or goods are forfeited is indicated; and

(b) has simultaneously with the publication of the notice aforesaid sent a like notice by registered post to the person who in the opinion of the Treasury is affected by that decision or, if his address is not known, to his last known address, and the Treasury shall not dispose of any goods forfeited to the State under subregulation (1), unless a period of 90 days as from the date of publication of such notice in the *Gazette* has expired or, if any proceedings has been instituted in a court of law in connection with any such decision, final judgment has been given in such proceedings...

[34] Regulation 22D provides, among others, for the review of an attachment or an order made in terms of Regulation 22A or Regulation 22C. It empowers a person aggrieved by such attachment or order to apply to court for the review and setting aside of the impugned decision, as envisaged by sections 9(2)(d)(i) or (iii) of CEA.

[35] Regulation 22E empowers the Minister to delegate Treasury's powers, functions and duties in relation to the Regulations relevant to this application, to SARB functionaries and FinSurv.

[36] In *South African Reserve Bank v Torwood Properties (Pty) Ltd ('Torwood')*¹⁴ the Appellate Division of the Supreme Court (now the Supreme Court of Appeal ('SCA')) explained how the Regulations operated as follows:

What is contemplated by the regulation, in very general terms, seems (by way of an example) to be this: A contravention of the regulations is committed. The amount involved is Rx. That amount may be recovered by the Treasury. It may recover by attaching and declaring forfeit, for example, the money 'involved' in the contravention. If that Rx cannot be found, the shortfall may be recovered by the attachment of 'other' (untainted) money or goods from the persons mentioned in subpara (i) to (iv) of reg 22C(1).¹⁵

B3: The purpose of exchange control

[37] SA has come a long way to reach where it currently is in terms of exchange control legislation. The CEA (i.e. Currency and Exchanges Act 9 of 1933) was the pioneering legislation which owed its origin to the Great Depression of 1929. And just over thirty years later, the exchange control regulations ensued from the economic crises which followed the Sharpeville massacre in 1960¹⁶ in a quest to insulate SA's economy from capital flight.

[38] The legislation or regulation on exchange control is geared towards the regulation or curbing of the export or import of capital from SA to facilitate an efficient operation of the commercial, industrial and financial system of the country. The purpose of the Regulations may be stated in three-fold: (a) to prevent loss of financial capital resources through offshore transfer from SA; (b) to effectively maintain control of the movement to and from SA of financial and real assets, and (c) to steer away from meddling with the efficient operation of

¹⁴ *South African Reserve Bank v Torwood Properties (Pty) Ltd* 1997 (2) SA 169 (A).

¹⁵ *Torwood* at 178C-D. See also *South African Reserve Bank v Khumalo and another* 2010 (5) SA 449 (SCA) [7].

¹⁶ *South African Reserve Bank And Another v Shuttleworth And Another* 2015 (5) SA 146 (CC) [53]; *Standard Bank of South Africa v South African Reserve Bank And Others* 2025 (5) SA 289 (GP) *pr* Motha J [1].

the financial, commercial and industrial system of SA.¹⁷ But the export of capital from SA is possible on the conditions imposed for exchange control.

[39] The democratic overhaul of SA from 1994 included commencing the relaxation of exchange control and, ten years later in 2003, the Minister - buoyed by resilient economy continued the relaxation of exchange controls by allowing SA emigrants to unwind and export assets previously blocked upon satisfaction of certain conditions.

[40] The courts' role has included offering clarity in disputes involving exchange control regulation. This is manifested by, among others, the decisions of the Constitutional Court in *South African Reserve Bank and Another v Shuttleworth and Another*¹⁸ and of the SCA in *Leathern*.¹⁹

B4: Other legal principles

[41] Counsel's submission include that the primary issues before the Court constitute judicial review of an administrative decision. Further, that principles applicable to the determination of reviews retain a critical distinction from those applicable to appeals.²⁰ And, therefore, what ought to be determined in the matter before this Court is not whether the applicant – from a factual point of view - contravened the Regulations, but whether when effecting the attachment of the applicant's assets was effected by one or all of the respondents reasonable grounds existed for a suspicion that the applicant had contravened the Regulations. This determination ought to be in the perspective of the designated functionary and not anyone else, including the Court itself.²¹

¹⁷ *South African Reserve Bank v Leathern NO and others* 2021 (5) SA 543 (SCA) ('Leathern') [36].

¹⁸ *South African Reserve Bank and Another v Shuttleworth and Another* 2015 (5) SA 146 (CC) [53]-[54].

¹⁹ *Leathern* [36].

²⁰ *Minister of Home Affairs And Others v Scalabrini Centre And Others* 2013 (6) SA 421 (SCA) [65]-[66]

²¹ *Leathern* [15]-[16].

C : BRIEF BACKGROUND OR CHRONOLOGY OF THE MATERIAL FACTS

[42] On 25 August 2017, FinSurv approved a proposed pre-listing statement of Steinhoff Africa Retail Limited (i.e. ‘STAR’) on the Johannesburg Stock Exchange through a private placement of shares. STAR’s proposed pre-listing statement was submitted to FinSurv on application by Standard Bank of 23 August 2017. The approval was subject to the specific condition that no proceeds pertaining to the listing may be transferred outside of SA without FinSurv’s prior approval. STAR’s listing was on 20 September 2017. A subscription price of about R15,132 billion was raised. The applicant says he passed on FinSurv’s approval to Steinhoff’s mergers and acquisitions department.

[43] The applicant says - internally within the Steinhoff Group - he passed FinSurv’s conditions for listing to a Mr La Grange, the chief financial officer of SIHNV, promptly on 24 August 2017. SIHNV, it ought to be borne in mind, is an offshore entity within the Steinhoff Group.²² In the approved pre-listing statement, SIHNV was designated a recipient of the proceeds of the listing in the event a dividend was declared.

[44] STAR declared as a ‘dividend’, R15 billion of the total amount raised as subscription price. Subsequently, STAR transferred abroad - through an authorised dealer - to SIHNV of around R4,7 billion of the total subscription price, without FinSurv’s approval and, thus, in contravention of the pre-listing condition. According to the applicant, the proceeds of the listing were paid to the shareholders of STAR. Steinhoff Investment, as the ‘ultimate local shareholder’, declared a dividend and paid over to SIHNV. As would become clearer below, it is the applicant’s case that he was neither employed by Steinhoff Investment nor SIHNV. The applicant also contends that he played no role in the payment of the dividend.

²² Pars [20]-[21] above.

[45] On 26 September 2017, the applicant – for and on behalf of Steinhoff – successfully sought the approval of SARB or FinSurv for the payment of the dividend. It is common cause that this was after the fact and that the applicant did not inform FinSurv that payment of the first tranche of the dividend had already left SA. It is SARB’s case that this was an omission in contravention of the Regulations on the part of the applicant. The applicant’s case is that no legal duty existed on him in this regard.

[46] On 27 February 2020, FinSurv requested information from the applicant pursuant to its investigation regarding SIHNV and ‘related persons and entities’. On 9 March 2020, and in response to the request for information, the applicant was interviewed by FinSurv as part of its investigation. The applicant interacted with the fifth respondent, Mr Malherbe of FinSurv, during the investigation, even exchanging correspondences during February to April 2021. The applicant was also asked a number of questions relating to his remuneration.

[47] On 19 October 2021, Mr Naidoo, as SARB’s Deputy Governor, attached several immovable properties and motor vehicles belonging to the applicant (i.e. ‘the Property’) by notice (‘the Attachment Notice’) in terms of Regulation 22C of the Regulations.

[48] On 4 November 2021, the applicant requested reasons for the attachment from FinSurv and the reasons were provided in a letter dated 14 February 2022 written by Bowmans attorneys (‘the Reasons Letter’), now acting as the respondents’ attorneys of record in these applications. Both sides – albeit for different reasons – recognise that in a way the Reasons Letter qualified the legal basis for the Attachment effected in terms of the Attachment Notice.

[49] Around 5 August 2022, the applicant brought the Review for setting aside the decision grounding the Attachment of the Property on the grounds that it was unlawful.

[50] On 19 August 2024, the applicant was invited to make any written representations he wished to make for consideration by SARB regarding why a forfeiture of the Property should not be made, in terms of Regulation 22B (the ‘Audi Notice’, relating to the doctrine of ‘*audi alteram partem*’ (i.e. hear the other side). By this time the expiry of the Attachment was imminent on 19 October 2024.²³ The applicant objected to the intimated forfeiture order in his response to the Audi Notice also seeking an undertaking that SARB would not proceed with same. But, SARB did not provide the required undertaking.

[51] On 8 October 2024, the applicant obtained an order from this Court after he launched an urgent application on *ex parte* basis (i.e. the ‘Forfeiture Interdict’). The Court issued a *rule nisi* calling upon the respondents to show cause why they should not be interdicted from taking a decision regarding the forfeiture of the Property. The return date for the rule was 19 October 2024.

[52] But the respondents anticipated the return date and sought the reconsideration of the Forfeiture Interdict and the order made on 10 October 2024. They also brought a counter-application, conditional upon a decision by the Court not to discharge the interim interdict, extending the period of validity of the Attachment from 19 October 2024 to 15 July 2026.

[53] On 11 October 2024, by agreement between the parties, the Court granted an order: (a) discharging the order in the Forfeiture Interdict and setting aside the *rule nisi*; (b) postponing the Forfeiture Interdict application *sine die*; (c) extending the period of validity of the Attachment to 15 July 2026, and (d) reserving costs.

²³ Section 9(2)(g) of the CEA provides that, the attachment of property lapses on the expiry of a 36-month period, unless extended by a court on good cause shown.

D : THE REVIEW

D1: General

[54] The Review is pivoted on the following grounds: (a) the Attachment Notice did not say that the applicant was suspected of contravention of Exchange Control Regulations, but rather a proposition unsustainable in law and wide of the provisions of Regulation 22C; (b) no reasons for the Attachment were given, as the Reasons Letter (authored by Bowmans) (or its material aspects) was not confirmed as his reasons by Mr Naidoo, as he relied for the Attachment on the basis set out in Mr Malherbe's affidavit (i.e. the respondents' answering affidavit), despite the latter having come into existence long after the Attachment; (c) the respondents prematurely relied on Regulation 22C(1) before a forfeit or an attempt to have any assets declared forfeit, which renders Regulation 22C inapplicable; (d) Mr Naidoo is unwilling or unable to identify (and, thus, lacks evidence) the category of persons into which the applicant falls within the provisions of Regulation 22, as well as the Regulations allegedly contravened by the applicant (as both aspects confirm that Mr Naidoo did not hold any suspicion about the applicant); (e) Mr Naidoo's suspicion, if any is established, was not reasonable as: (i) it is based on undisclosed facts; (ii) it is dependent on the so-called admission by the applicant which is open to interpretation as it was derived from an interview in breach of the applicant's rights to legal representation and whose material is based on the applicant's fallible memory, due to the lapse of time; (iii) it is based on the respondents' conclusions irreconcilable with conclusions based on the common cause facts, as to the applicant's material remuneration; (iv) no legal basis existed for the conclusion that Regulation 3²⁴ had been contravened without any indication of what the applicant is alleged to have exported from SA to receive offshore remuneration, and (v) no legal basis existed for the conclusion that Regulation 6²⁵ has been contravened, which is inapplicable to individuals, such as the applicant, who earn income abroad while being

²⁴ Par [27] below on Regulation 3.

²⁵ Par [28] below on Regulation 6.

physically there; (vi) no reasonable basis existed for the conclusion that a contravention of Regulations 3 or 22 had occurred in respect of the payment of dividend, although contravention of Regulation 3 was not subject to imposition of penalties where, as in this instance, a subsequent approval was obtained according to SARB's policy.

[55] The respondents dispute that there is merit in the applicant's grounds for the Review, including on the basis set out next. The applicant is said to be opportunistically seeking to capitalise on – what the respondents label – an inadvertent error in the Attachment Notice, despite having been informed in the Reasons Letter that the correct position is that the Attachment was effected in terms of Regulation 22C(1) on the Property, as assets other than those involved in a contravention of the Regulations. The respondents, also, express the same view regarding the applicant's additional ground for the Review - introduced through a supplementary affidavit - for the review of a blocking order, subsequently issued by SARB.

[56] Next, I reflect the summaries of the cases put forward by the parties and submissions made by counsel in respect thereof, so that the issues requiring determination could be identified.

D2: Applicant's case and submissions (summarised)

[57] The applicant, to recap, seeks the Court's review and setting aside of the Attachment Notice or the Attachment of the Property by SARB effected in terms of regulation 22C(1)²⁶ of the Regulations. According to the applicant, the Attachment is a precursor to the forfeiture of the attached goods to the State in terms of Regulation 22B.²⁷ The Review is in terms of Regulation 22D and it is only competent to set aside an attachment where SARB or its functionary (such Mr Naidoo, as the Deputy-Governor of SARB) has either not complied with

²⁶ Par [32] above for a reading of Regulation 22C.

²⁷ Par [33] above for a reading of Regulation 22B.

the provisions of the Regulations when taking the decision or took the decision without reasonable grounds for doing so.²⁸ The applicant's case is premised on both grounds.

[58] According to the applicant the Attachment is strongly influenced by the fact that he was previously employed by SARB, before he joined SAH. SARB is meting out to him different treatment than other persons in similar situation. This is so, despite the fact that SARB was aware of and gave approval for the payment of STAR's listing proceeds to its shareholders, part of which were ultimately paid by Steinhoff Investment as a dividend to SIHNV (the 'SIHNV Payment'), it is further contended.

[59] The applicant, further, says that his role or involvement in the SIHNV Payment was limited to obtaining SARB's approval for the payment, as tasked by his employer. His employer was aware of the date (i.e. 26 September 2017) when he would be seeking the material approval at a meeting with the representatives of SARB. He was not employed by Steinhoff Investment, the entity which already made the SIHNV Payment on 22 September 2017, or SIHNV, as the recipient of the SIHNV Payment.

[60] As indicated above, FinSurv granted approval, but the applicant admits his omission of not telling FinSurv that the SIHNV Payment had by then already been made. According to the respondents, the applicant had a duty to inform SARB that the SIHNV Payment, particularly given his prior experience as employee of SARB and his knowledge of exchange control matters.

[61] But, the applicant's retort in this regard is that: (a) SARB's real-time reporting system would have reflected the SIHNV Payment; (b) Standard Bank, as the authorised dealer who gave effect to the SIHNV Payment, equally, did not disclose same at the approval meeting, but

²⁸ Par [34] above for a reading of Regulation 22D.

is not considered by SARB to have contravened the Regulations, and (c) SARB would have approved the transaction, irrespective of whether the SIHNV Payment is disclosed or known, as the exchange controls do not find application to offshore investors.

[62] The respondents' case is that the applicant surrendered a portion of his SA Rand-based salary in exchange for receiving a foreign currency equivalent abroad in the total of about €149 000 (equivalent to approximately R2 million) ('the Offshore Remuneration') without permission and in breach of Regulations. But, the applicant persists that there is no credence to this and SARB, unfairly so (I paraphrase), relied in this regard on the so-called admission by the applicant made when he was being interviewed by FinSurv devoid of legal representation. Be that as it may, the applicant, it is submitted, had by the time SARB conducted its investigation already brought all his money back into SA and closed his offshore bank account.

[63] Regarding the respondents allegation, as stated in the Reasons Letter, that the applicant either assisted or facilitated and/or benefitted from the Offshore Remuneration, it is contended that, there is no precise mention of the applicant's contravention and his alleged role in this regard.

[64] For, primarily, these reasons SARB's decision(s) (i.e. the Attachment and blocking order) was/were without suspicion, or if any such suspicion is found, same was not reasonable and, thus, SARB should be granted the relief sought.

D3: Respondents' case and submissions (summarised)

[65] The respondents' case - in opposition to the Review and for fortification of the fact that a reasonable suspicion existed that the applicant contravened Regulation 3(1)(d) and/or Regulation 6 and/or Regulation 10(1)(c) of the Regulations – may be summarised as appearing next.

[66] According to the respondents, the Property was attached in terms of the Attachment Notice under Regulation 22C, as it was suspected to be relevant to a breach of the Regulations on two bases, namely, the SIHNV Payment and the Offshore Remuneration. First, the Offshore Remuneration is said to be in breach of Regulation 3(1)(d) and/or Regulation 6 and/or Regulation 10(1)(c) of the Regulations. The receipt of his remuneration abroad without permission from SARB is not disputed by the applicant. Secondly, the applicant is considered to have contravened Regulation 3(1)(c) and Regulation 22 of the Regulations with regard to the SIHNV Payment.

[67] Regarding the SIHNV Payment, it is said that the applicant, together with other persons, materially misrepresented the position to FinSurv when approval was sought, by omitting to inform FinSurv that by then the SIHNV Payment had already been made. This was in contravention of Regulation 3(1)(c) (for making a transfer abroad), and Regulation 22 (misrepresenting the true state of affairs regarding exportation of capital).

[68] Overall, it is the respondents' case that, the Attachment, equally the blocking order, were based on a reasonable suspicion by SARB or its designated functionaries that the applicant had contravened one or more of Regulations 3(1)(c); 3(1)(d); 6; 10(1)(c), and 22. And the test for whether these Regulations have been contravened, it is submitted, is at a low threshold (i.e. whether, on the basis of the facts before it, the designated functionary of SARB has reasonable grounds to believe that a contravention has occurred).²⁹

D4: Issues requiring determination

[69] From what appears above, the issues to be determined in this Review are the following: (a) the Offshore Remuneration; (b) the Attachment Notice; (c) the Attachment; (d) the Reasons Letter; (e) absence of identified shortfall; (f) failure by the third respondent to apply his mind;

²⁹ Section 9(2)(b)(i)(aa) of the; Regulation 22C(1)(d); *Francis George Hill Family Trust v South African Reserve Bank and others* 1990 (3) SA 704 (T) at 711H.

(g) absence of reasonable suspicion, and (h) the blocked funds. There may be additional issues of an ancillary nature, which may seep into the discussion of the above issues. Some of the issues will be discussed jointly due to their evident interlinkages.

D5: The Attachment (incorporating the Attachment Notice and the Reasons Letter)

[70] The Attachment of the Property, as stated above, was effected in October 2021 by the Deputy Governor of SARB, Mr Naidoo, in terms of the Attachment Notice. He relied on Regulation 22C(1) and mentioning Regulations 2 and 7. This, the applicant pointed out, differed with the prior letter (i.e. of 9 April 2021) by Mr Malherbe, the fifth respondent, which referred to contraventions of Regulations 3(1)(d) and/or 6(2) and/or 6(5) and/or 10(1)(c). Notably, it is pointed out by the applicant, the Attachment Notice did not refer to Regulation 10, although it has additional Regulations 2, 7 and 22. The applicant criticises the choice of Regulations 2, 7 and 22 by Mr Naidoo for the Attachment Notice, as indicative of Mr Naidoo's improper application of his mind when effecting the Attachment.

[71] It is, further, submitted on behalf of the applicant that Mr Naidoo's reliance on Regulation 22C(1) is unsustainable in law as the Regulation requires: (a) actual and not a suspected shortfall of the amount for the contravention and what has been recovered, as the notice was silent on any shortfall, and (b) attachment of goods or money of the particular person meeting the criteria in Regulation 22C(1), and the notice merely stated that the goods themselves were in respect of the committed contravention, which does not comport with the Regulation.

[72] The applicant also contends that the Reasons Letter (of 14 February 2022 by Bowmans as the attorneys for the respondents), which provided him with the reasons for the attachment, ought to have been confirmed by Mr Naidoo as his reasons. Also, that the Reasons Letter agreed that attachment under Regulation 22C(1) are in respect of particular types of persons as

opposed to particular goods and advised that the contrary view in the Attachment Notice was an inadvertent error. The applicant, however, complains that this is not confirmed by Mr Naidoo. I hasten to point out that Bowmans were acting on behalf of, among others, Mr Naidoo and therefore the views in the Reasons Letter are those of Mr Naidoo.

[73] Further complaints by the applicant regarding the Reasons Letter are that: (a) it did not explicitly identify the category of persons the applicant is said to be in terms of Regulation 22C(1); (b) it did not address the shortfall issue, but only stated in accordance with Regulation 22A(1) that no money or goods were forfeited, and (c) at variance with Mr Naidoo (on not invoking Regulation 10 in the Attachment Notice) it stated that the applicant was believed on reasonable grounds to have contravened Regulations 3(1)(d) and/or 6 and/or 10(1)(c) in respect of the Offshore Remuneration. These issues are dealt with further, below.

D6: Offshore Remuneration

[74] According to the applicant the respondents relied on his explanation during the engagements with FinSurv, done without legal representation and only from memory, for their conclusions that he contravened the Regulations regarding the Offshore Remuneration.

[75] This is how the Offshore Remuneration came about according to the respondents. Some local-based employees at executive and senior management level of Steinhoff International Holdings, Steinhoff At Work and/or SAH or other third-party individuals were allowed to surrender a portion of their SA Rand-denominated salary in exchange to receive an equivalent thereof in Euros in an offshore private bank account. The surrendered portion formed part of the particular employee's SA Rand-denominated remuneration package. And, the arrangement required permission in terms of the Regulations.

[76] Two critical aspects of the Offshore Remuneration issue appear to be common cause between the parties, that the applicant's employer - at all relevant times - was SAH, a South

African resident company and the applicant received payment in a foreign currency, abroad in a total amount of about R2 million.

[77] The applicant denies contravention of the Regulations on his part. What he received abroad in foreign currency was payment for services he rendered abroad to foreign entities in terms of a separate consultancy agreement with Steinhoff Europe Group Services GmbH.

[78] The consultancy agreement is branded by the respondents a sham or simulation meant to conceal the true state of affairs, including for the following reasons: (a) no fully signed agreement has been provided; (b) the agreement was effective from 1 July 2010, when the applicant admitted earning €149 178.64 between March 2010 and October 2017; (c) the figure of €6 000 bi-monthly earnings, suggested by the applicant, is inconsistent with the €12 000 per annum stipulated in the consultancy agreement, and the applicant admitted non-compliance with the agreement by not submitting invoices for services rendered.

[79] The respondents also blames the applicant of inconsistency. Whilst he says he was at all relevant times employed by SAH and rendered services to the entire Steinhoff Group, including overseas entities, he also assert that he received less than 15% of his earnings abroad whilst spending about 80% of his time servicing overseas entities in the Steinhoff Group. And the respondents point out that the Exchange Control Circulars relied upon by the applicant are no longer in force, as they have been withdrawn.

[80] The applicant rejects that the consultancy agreement was a simulation. Such inference is not borne by the probabilities and is not supported by any evidence, it is argued. This approach, it is further argued, on the part of SARB and its functionaries, is inimical of the formation of a reasonable suspicion.

[81] But, the respondents argue that there is a clear factual basis for SARB's suspicion based on reasonable grounds to suspect, that the applicant – in respect of the Offshore Remuneration - contravened the Regulations 3(1)(d); 6(2); and 10(1)(c).

D7: Absence of identified shortfall

[82] The applicant's case for Review is also premised on the ground that no shortfall was identified by SARB or the respondents to indicate the amount involved in the contravention, and, consequently, to justify the Attachment. Further, no money has been forfeited for the alleged contraventions and, thus, no attachment is possible under Regulation 22C on the basis that there is as a shortfall or difference between the amount in the contravention and the amount forfeited in terms of Regulation 22B.

[83] The Attachment Notice provided no value for the Offshore Remuneration, but this was only done in the letter by Mr Malherbe (which indicated the amount of the €149 000). The other value in respect of the SIHNV Payment is approximately R4,7 billion stated in the Reasons Letter. But, the applicant is only implicated in the non-disclosure of an alleged exchange control contravention. Overall, the applicant further contends, there ought to be an actual and not just suspected shortfall. There is no evidence in this regard. Therefore, reliance on section 22C(1) is inappropriate.³⁰

[84] The respondents say that the applicant's assertions regarding identification of a shortfall are unsustainable as there is no forfeiture. The amount to be considered for the applicant's suspected contravention is the stated amount of around R4,7 billion.

³⁰ *Torwood* 1997 (2) SA 169 (SCA) at 178J-179B. The respondents criticise the applicant's reliance on the decision in *Torwood* as unavailing of the applicant, as its context was for attachment under Regulation 22C(1)(iii) where the owner of the property had not contravened the Regulations, unlike in this matter.

D8: Attachment is for goods, rather than goods belonging to a particular type of person

[85] The Review is also pivoted on the ground that the Attachment Notice made no reference to the categories of persons in Regulation 22C(i)-(iv), despite it concerning the attachment of ‘untainted’ money or goods under the Regulation. As stated above, the applicant is of the view that the concession by the respondents in the Reasons Letter that the omission was an inadvertent error given does not avail the respondents. His view for this is what he considers the absence of confirmation by Mr Naidoo in this regard. Therefore, it is submitted, that there is no admissible evidence before the Court of a mistake on the part of Mr Naidoo. And that the assertion by Mr Naidoo that his decision (taken on 19 October 2021) was informed by ‘the facts set out by Mr Malherbe in his affidavit (deposed to on 2 November 2022) is inconceivable. Therefore, the decision by Mr Naidoo, as contained in the Attachment Notice, did not comport with the Regulation.

[86] According to the respondents, the applicant’s attack based on the alleged failure to specify the applicable category in Regulation 22C(1) into which he is suspected to fall is without merit. The respondents say that the Reasons Letter clearly recorded that this was an inadvertent error, and clarified the basis for the Attachment. And there is evidence before the Court in the form of Mr Naidoo’s confirmatory affidavit regarding the contents of the answering affidavit. Also, there is a clear set-out of the factual basis and reasons for the Attachment.

D9: Deputy Governor Mr Naidoo failed to apply his mind

[87] The applicant’s case includes Mr Naidoo failed to apply his mind. This includes his failure to allot the applicant a category, as just discussed above.

[88] There was also a tentative assertion that the applicant either assisted or facilitated and/or benefitted from the payment of the remuneration portion in foreign currency abroad. The

applicant, it is submitted, is not a person in category (i) and cannot be a person in category (iii), as category (iii) requires an actual benefit or enrichment, not a suspected one, and there is no evidence of the applicant having benefitted from or being enriched by the SIHNV Payment or the Offshore Remuneration. It is submitted that the payments relating to the Offshore Remuneration ‘were a quid pro quo’ for the applicant’s services and not enrichment or benefit envisaged by the Regulations.

[89] The respondents dispute the applicant’s contention that Mr Naidoo failed to apply his mind in the issuance of the Attachment Notice and blocking order, due to the alleged absence of express reasoning for the impugned decisions. Nothing suggests that Mr Naidoo arrived at the decision for the Attachment arbitrarily or capriciously or *mala fide* or as a result of unwarranted adherence to a fixed principle or in order to further an ulterior or improper purpose’.³¹ The rationale for Mr Naidoo’s suspicion of the applicant’s contravention of the Regulations is fully set out in the Reasons Letter, buoyed by the applicant’s own evidence in these proceedings, the respondents’ contention concludes.

D10: Respondents’ suspicions are not reasonable

[90] Further, it is submitted on behalf of the applicant, that if Mr Naidoo is found to have held a suspicion regarding the applicant’s contraventions, such suspicions were not reasonable.

[91] The test in this regard is whether on the facts Mr Naidoo, as SARB’s designated functionary, had reasonable grounds to believe that a contravention has occurred.³²

[92] It is submitted on behalf of the applicant that there was no suspicion, at all, or, if any is found, that there was no reasonable suspicion for the following reasons: (a) there is a

³¹ *Johannesburg Stock Exchange And Another v Witwatersrand Nigel Ltd And Another* 1988 (3) SA 132 (A) at 152C-D.

³² Section 9(2)(b)(i)(aa) of the CEA; Regulation 22C(1)(d); *Francis George Hill Family Trust v South African Reserve Bank and others* 1990 (3) SA 704 (T) at 711H.

complete lack of disclosure of what led to the suspicion;³³ (b) the formation of a suspicion by Mr Naidoo from the facts in Mr Malherbe's affidavit which lacks the required facts; (c) the Reasons Letter offers no aid as Mr Naidoo does not rely on the Reasons Letter for his suspicion, and (e) absence of confirmation by the respondents of the correctness of the Reasons Letter. This is so, despite the so-called admission by the applicant regarding the Offshore Remuneration, which, simply, cannot serve as a factual basis for the respondents' conclusion.

[93] The respondents, on the other hand, contend that a reasonable suspicion was present and, thus, Mr Naidoo, as SARB's designated functionary, was entitled to effect the Attachment under Regulation 22A(1)(a) and/or 22C(1) for the Property and the blocking order to prevent the withdrawal of funds in the credit of the applicant in the bank account under Regulation 22A(1)(b) and/or 22C(2).

[94] The applicant disputes that Regulation 6(5) finds application. Regulation 6(2), clearly applies to persons who earned offshore income whilst physically offshore and the applicant was such a person. Nevertheless, the applicant's Offshore Remuneration was less than the amount adult South African residents were allowed to invest offshore and less than the R750 000 per annum allowed for offshore travel, donations, gifts and maintenance obligations.

[95] Regarding the SIHNV Payment, the applicant denies that there was contradiction of Regulation 22 for his failure to disclose the SIHNV Payment to FinSurv. The applicant, It is argued on his behalf, has no duty to do so. Whilst the applicant knew that payment had been made by an authorised dealer (which he assumed to have been authorised by Treasury) no approval by SARB was required for the SINHV Payment. Also, should Regulation 3 have been contravened, it was SARB's policy not to impose any penalties on any person who subsequently obtained approval for the impugned transaction, as done by FinSurv in respect of

³³ *Walele v City Of Cape Town And Others* 2008 (6) SA 129 (CC) [60].

SIHNV Payment. Overall, the failure to disclose cannot amount to contravention of Regulation 22 providing a basis for attachment, but rather an offence or liability to pay a fine.

[96] The respondents' case is that there was reasonable suspicion on the part of SARB that the applicant contravened the Regulations in respect of the SIHNV Payment based on the following facts: (a) proceeds from the STAR listing ought not have been transferred abroad without prior and not retrospective approval and SARB was not informed of the SIHNV Payment and the involvement of an 'authorised dealer' (not to be confused with a 'person authorized by the Treasury' to grant permission) is inconsequential to the contravention. The inadmissible opinion evidence (albeit by way of an affidavit) of Mr Charles van Staden, a former employee of SARB based with FinSurv until 2003, on interpretation of the applicable legal position is to no avail, it is further submitted. The Court is entrusted with the task of interpretation and application of the law in SA.³⁴ Besides, the opinions expressed by Mr Van Staden are contradicted by the evidence by Mr Raymond Paola, Assistant General Manager of FinSurv at the relevant time, who rejected the approach of seeking an approval for a transaction *ex post facto*.

D11: Blocked funds

[97] In July 2023, as stated above, SARB blocked access by the applicant to funds standing to credit of the applicant in his bank accounts.³⁵ The applicant invoked Regulation 22C(2)(a) for its decision premised on the same reasons as the Attachment. Submissions on behalf of the applicant are to the effect that if the Attachment is set aside – for the same reasons - there would be no basis for the blocking of the applicant's funds. It is the applicant's case that the blocking order, also, did not comport with the provisions of the Regulations and was not based on reasonable ground(s). Essentially, the applicant's argument as with the Attachment Notice is

³⁴ *KPMG Chartered Accountants (SA) v Securefin Ltd and another* 2009 (4) SA 399 (SCA).

³⁵ Par [7] above.

that the blocked funds are not proceeds of the contravention of exchange control and neither were they involved in the contravention of exchange control.

[98] Submissions on behalf of the respondents on the blocking order (made under section 9(2)(g) of CEA) include that, similarly to an attachment, a blocking order would remain extant for a period not longer than 36 months or until the expiry of a period of 12 months after final judgment, including any appeal, although, the court, on good cause, may on application extend the effective period of the blocking.³⁶ The effective period allows for an investigation into the suspected contravention of the Regulations and to decide whether to proceed to forfeiture under Regulation 22B³⁷ of the attached or blocked assets.

D12: Conclusions (on the Review)

[99] The Review is premised on section 9(2)(d) of the CEA. The provision allows a person aggrieved by a decision or action made or taken in the exercise of powers under the Regulations, such as the Attachment and the blocking order in this matter, to apply to a competent court ‘for the revision of such decision or action or for any other relief’.³⁸ Further, the provision is to the effect that a person aggrieved by a decision to forfeit and dispose of such money or goods may institute legal proceedings in a competent court to set aside the impugned decision.³⁹ It is common cause between the parties that the latter provision is of no relevance to the Review, as the applicant seeks the review and possible setting aside of the Attachment and the blocking order on the basis of section 9(2)(d)(i)(aa)-(bb).

³⁶ *South African Reserve Bank v Khumalo and another* 2010 (5) SA 449 (SCA) [11].

³⁷ Par [33] above.

³⁸ Section 9(2)(d)(i) of the CEA.

³⁹ Section 9(2)(d)(iii) of the CEA.

[100] Section 9(2)(d)(i)(aa) is relevant to a review premised on the grounds that ‘the person who made [the impugned] decision or took [the impugned] action did not act in accordance with the relevant provisions of the regulation’.

[101] And, section 9(2)(d)(i)(bb) provides for a review on the basis that the decision maker ‘did not have reasonable grounds to make such decision’.

[102] Should this Court agree with the applicant’s contentions on either of the bases or both it would be empowered to set aside the Attachment and/or blocking order or to grant other forms of relief deemed justified.

[103] Starting with section 9(2)(d)(i)(bb). The test in this regard is whether the decision maker or designated functionary, such as Mr Naidoo, had reasonable grounds to believe that a contravention has occurred when he made the Attachment.⁴⁰ I agree that this test is at a low threshold.⁴¹

[104] In my view, the decision maker(s) involved in the Attachment and blocking order had reasonable grounds to make the material decisions. The facts which existed when Mr Naidoo authored the Attachment Notice are the same facts which existed when Bowmans authored the Reasons Letter. Bowmans acted at all material times as the attorneys for SARB, including Mr Naidoo, and, ostensibly, would have derived their instructions from SARB. And, also the facts predicated the affidavit deposed to by Mr Malherbe originate from the activities for the SIHNV Payment and the Offshore Remuneration. Therefore, it is not reasonable to drive a wedge, so to speak, between the documents or actions by those role players. They relate to same activities, which may have taken place on different dates or sequentially, but they owe their origin from the objective facts which existed when the Attachment was made whether

⁴⁰ *Francis George Hill Family Trust v South African Reserve Bank* 1990 (3) SA 704 (T) at 711H.

⁴¹ *Ibid.*

those facts were explicitly stated in the Attachment Notice or the Reasons Letter. I also accept that a sufficient explanation was given in the Reasons Letter for the inadvertent error in the Attachment Notice.

[105] There is no need for me to traverse all the grounds. They are clearly recorded above and have informed my conclusion that SARB's material functionaries had reasonable grounds for the Attachment and/or blocking order. I also conclude that the functionaries acted in accordance with the relevant provisions of the Regulations. Therefore, the review is found to lack merit and will be dismissed with costs, which costs shall include the costs of two counsel on scale C, wherever applicable.

E : FORFEITURE INTERDICT

E1: General

[106] On 8 October 2024, the applicant launched in the urgent court (under case number: 2024-114389) an application to interdict the respondents and any relevant SARB functionary from taking forfeiture decision under Regulation 22B in respect of the assets of the applicant attached (i.e. Property) by the first respondent in respect of monies in the bank account of the applicant's already blocked by the first respondent in July 2023 (i.e. 'Forfeiture Interdict'), prior to the determination of the Review, dealt with above (under case number 2022-012498). On 8 October 2024 (i.e. same date of issuance of the application), the Court *per* Retief J granted a *rule nisi* returnable on 19 October 2024.

[107] But, the respondents filed papers anticipating the return date and seeking a reconsideration of application and order made. On 10 October 2024, by agreement between the parties, the Court discharged the *rule nisi*. It also extended to 15 July 2026 the period of the Attachment of the Property (i.e. the subject matter of the Review above) and postponed the application *sine die*.

[108] The applicant, subsequently, indicated that he will not be persisting with the application, but the impediment towards its final disposal was the issue of costs. The parties could not reach an agreement regarding costs were the application not to be persisted with. The Deputy Judge President of this Division directed that the application be heard, jointly with the Review, for a determination on liability for costs of the application. Ultimately, the applicant filed a notice of withdrawal on 12 June 2025, subject to the decision of the Court regarding liability for costs of the Forfeiture Interdict. Naturally, the facts in the background to the Forfeiture Interdict are *mutatis mutandis* those in the Review, save for those mentioned next.

E2: The origin and grounds for (and against) the Forfeiture Interdict (summarised)

[109] The applicant, on 29 August 2024, was advised by the first respondent (i.e. SARB), that SARB intends taking a decision to declare the Property and blocked funds forfeit to the State in terms of Regulation 22B. SARB did not initially state when it intends taking the decision, but on 13 September 2024 it informed the applicant that a forfeiture order would be made on or before 19 October 2024 to avoid the lapse of the Attachment. The urgent interdict application which is now conveniently labelled the Forfeiture Interdict ensued.

[110] The Forfeiture Interdict was pivoted on the grounds which included the following: (a) a lawful attachment ought to precede forfeiture,⁴² hence SARB ought to await the outcome of the challenge of the lawfulness of the Attachment in terms of the Review; (b) SARB was attempting to impermissibly immunise itself from having the reasonableness of its decisions (based on different reasons) tested by the Court,⁴³ and (c) SARB ought to have sought an extension of the period of attachment under section 9(2)(g) of the CEA.

[111] It is submitted on behalf of the applicant that costs of both the Forfeiture Interdict application and of the reconsideration be costs in the cause for the following reasons: (i) the

⁴² *Leathern* [37].

⁴³ *Minister of Education v Harris* 2001 (4) SA 1297 (CC) [18].

application achieved its intended purpose as the forfeiture decision was halted to allow the disposal of the Review of the Attachment; (b) SARB was prevented to avoid the Review from being determined prior to any declaration of forfeiture of the Property and, thus, the application was warranted.

[112] The respondents' or SARB's view is that the Forfeiture Interdict is simply a gross abuse of legal process. And, the outcome or order granted by the Court on 10 and 11 October 2024 denoted the applicant's lack of success in the Forfeiture Interdict. This means SARB or the respondents succeeded in having the Forfeiture Interdict reconsidered and set aside. The applicant failed to re-enrol the Forfeiture Interdict; the Review served before the Court for determination and, thus, the relief sought in the Forfeiture Interdict has become moot. The applicant ought to have withdrawn the Forfeiture Interdict and tendered costs. Actually, whether it is withdrawn or dismissed the applicant ought to be ordered to pay the costs of the application, including the reconsideration hearing on an opposed basis, such costs include the costs of two counsel on scale C.

E2: Conclusion

[113] Considering what is stated above and the manner in which the Forfeiture Interdict was launched and moved, I somewhat agree with the respondents' view that same may have not been completely without blemish. But, no doubt, the Court or presiding judge seized with the matter would have been alert to any abuse of the process of the Court or lack of bona fides.

[114] Also, I consider the respondents to have also benefited somewhat from those legal proceedings, due to the extension of the period of validity of the Attachment from 19 October 2024 to 15 July 2026. I do not agree with counsel for the respondents that there is no such benefit. But, whether one calls it a benefit or not, clearly the attainment of the extension order may have required the respondents to initiate their own proceedings.

[115] Therefore, I will hold the applicant liable for up to 70% of the costs of the application, including the reconsideration, which costs shall include the costs of two counsel on scale C, wherever applicable.

F : ORDER

[116] In the premises, under Case Number: **2022-012498**, I make an order in the following terms:

- a) the application is dismissed, and
- b) the applicant is liable for costs of the application, which costs shall include the costs of two counsel on scale C, wherever applicable.

[117] In the premises, under Case Number: **2024-114389**, I make an order in the following terms:

- a) the applicant is liable for 70% of the costs of the application, which costs shall include the costs of two counsel on scale C, wherever applicable.



Khashane La M. Manamela
Acting Judge of the High Court

Date of Hearing	:	10 and 11 June 2025
Date of Judgment	:	13 October 2025
Appearances	:	
For the Applicant	:	Mr P Ginsburg SC and Mr KD Iles
Instructed by	:	Polson Law Practice, Pretoria
For the Respondents	:	Mr NGD Maritz SC and Mr M Stubbs
Instructed by	:	Bowman Gilfillan Inc, Cape Town c/o Bowman Gilfillan Inc, Pretoria