

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2025 - 247149

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: NO
19 January 2026	
DATE	SIGNATURE

In the matter between:

KASTELO PROPRIETARY LIMITED

Applicant

and

THE SOUTH AFRICAN RESERVE BANK

First Respondent

LESETJA KGANYAGO N.O.

Second Respondent

NOMFUNDO TSHAZIBANA N.O.

Third Respondent

TSUMBENDO CHARLES NEVHUTANDA N.O.

Fourth Respondent

DION NANNOOLAL N.O.

Fifth Respondent

ANDRE MALHERBE N.O.

Sixth Respondent

THE MINISTER OF FINANCE

Seventh Respondent

ACCESS BANK SOUTH AFRICA LIMITED

Eighth Respondent

JUDGMENT

NOKO J.

Introduction

[1] The applicant instituted an urgent application to review and set aside the decision of the respondents to issue a blocking order (“*Order*”) against the applicant’s bank account held with the eighth respondent. The order was issued in terms of the Exchange Control Regulations¹ (“Exchange Regulations”) which permit the respondent to issue an order where there is a suspicion that a bank account is utilised for activities that contravene the exchange regulations. The applicant contends that the decision to issue the order is susceptible to be reviewed and set aside in accordance with the principle of legality, alternatively the Promotion of Administrative Justice Act² (“PAJA”) or the Exchange Regulations.

[2] The seventh respondent, the head of the Financial Surveillance Department (“FinSurv”) of the first respondent who issued an order is opposing the application and has deposed to an answering affidavit on behalf of the first to sixth respondents. Other respondents are not participating in this *lis* and reference to the respondent would mean the first to seventh respondents.

Background

[3] Given that the judgment is limited to the findings on urgency the background of the matter will be truncated. The South African Reserve Bank³ has as one of its objectives “... *to protect the value of the currency of the Republic in the interest of the balanced and sustainable economic growth in the Republic*⁴ and to maintain financial stability. Exchange

¹ Promulgated by Government Gazette Notice R1111 of 1 December 1961 in Extraordinary Government Gazette No 123.

² Act 3 of 2000.

³ Established in terms of the South African Reserve Bank Act 90 of 1989.

⁴ In terms of section 3 of the Reserve Bank Act.

Control regulations are promulgated in terms of section 9⁵ of the Currency and Exchanges Act⁶ and they, *inter alia*, regulate transferring or exporting currency directly and indirectly from the Republic of South Africa which impacts the value of the currency and financial stability. The responsibility to control and supervise compliance with the Exchange Regulations resides within FinSurv. Apropos to this application are regulations 22A and 22C of the Exchange Control Regulations, which provide for freezing (or blocking) of bank accounts where there is suspicion that the regulations are being contravened. Once a bank account is frozen the FinSurv has 36 months in terms of section 9(2)(g) of the Currency and Exchanges Act to conduct a full-scale investigation. Regulation 22D of the Exchange Regulations provides for a remedy to an aggrieved party to review and set aside the order issued by the FinSurv.

[4] The applicant conducts its business as a financial services provider duly licensed to conduct business as such in terms of the Financial Advisory and Intermediary Service Act⁷ and operates *a digital platform through which ordinary South African consumers are able ... to deposit and withdraw funds, make payments, hold value in a digital wallet, participate in and benefit from the digital economy and trading*". The applicant's system "... is designed to identify and exploit pricing differentials in cryptocurrency markets by executing linked transactions – buying a crypto asset at a lower on an offshore exchange, transferring it to a South African exchange, and selling it locally at a higher price (after costs and changes) with the intention of realizing a profit on the differential." ⁸

[5] The regulations allow a limited export of foreign currency from South Africa. In respect of a Single Discretionary Allowance ("SDA") a person may export up to R1million and in respect of a Foreign Investment Allowance a person may export up to R10million. Clients who successfully participate in the applicant's scheme are promised a bonus of R2000.00 to R10 000 per annum to purchase and acquire crypto assets. Where a client has no funds to invest with the applicant the latter may provide loans to qualifying clients.

⁵ Sec 9. **Regulations regarding currency, banking or the exchanges.** —

(1) The Governor-General may make regulations in regard to any matter directly or indirectly relating to or affecting or having any bearing upon currency, banking or exchanges.

⁶ Act 9 of 1933.

⁷ Financial Advisory and Intermediary Services Act 37 of 2002.

⁸ See para 51 of the Applicant's heads of argument at 054-15.

[6] The applicant would, in its discretion and after identifying pricing differentials in crypto markets, request from its Authorised Dealers (“Access Bank”) to convert the rands (“the client’s funds”) into foreign currency. Such funds would be deployed to acquire crypto assets abroad. The crypto assets would be repatriated to South Africa and then sold on the local market in rands for the benefit of the clients. The profit made would after the charges or interest (if applicable) be shared with the client.

[7] The respondent avers that it received information from the applicant’s bank, i.e. the eighth respondent, whistleblowers and some of the applicant’s clients that the nature of transactions undertaken by the applicant appears to contravene the Exchange Regulations. Then respondent then exercised his powers on 24 November 2025 in terms Regulations 22A and 22C and issued an order freezing the applicant’s bank account.

[8] The applicant became aware of the order on 25 November 2025 and contacted the respondent over the phone to urgently provide the reasons for the order. The reasons were provided to the applicant over the phone. The applicant made a request in terms of section 5 of PAJA⁹ for the reasons to be provided in writing. There were exchanges between the parties from 25 November 2025 until the written reasons were furnished on 16 December 2025. The applicant then instituted a notice of motion in terms of Rule 53 of the Uniform Rules of Court on 17 December 2025.

[9] The respondent was required to furnish the applicant with the record by 17h00 on 17 December 2025, being a period of five hours from service, and the applicant would, if need be, deliver its supplementary affidavit a day later on 18 December 2025 at 17h00. The respondent would, if so advised, serve a notice to oppose at 12h00 on 19 December 2025 and deliver the answering affidavit at 12h00 on 23 December 2025. The applicant would deliver the replying affidavit, if need be, on 25 December 2025. The application was set down for hearing on 30 December 2025 but was removed by agreement between the parties and enrolled for 6 January 2026.

⁹ Section 5(1) of the PAJA provides that:

Any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned furnish written reasons for the action. (2) the administrator to whom the request is made must, within 90 days after receiving the request, give that person adequate reasons in writing for the administrative action.

[10] The applicant contends that the application is urgent and should be adjudicated on that basis as it is unable to carry out its contractual obligations to its clients, and that the order “...has inevitably damaged client relationships and confidence in Kastelo’s platform.” Furthermore, that the effect of freezing or blocking the core aspects of the business has undermined the confidence of clients and other stakeholders.

[11] The applicant contends further that urgency is not self-created and attempts to settle the dispute with the respondent was to avoid rushing to court. The respondent took time to provide the reasons and at some stage had a meeting with the respondent and the latter promised to furnish the reasons in writing on 5 December 2025 but still failed to furnish them. The written reasons were only furnished after the applicant made a threat to approach court and argue that the freezing was made without any reasons at all.

[12] The respondent in turn contends that the applicant was informed of the reasons on 25 November 2025 and should have proceeded to court immediately without demanding written reasons. To this end the respondent submitted that the applicant did not act with the urgency required and the alleged urgency was self-created. On this basis alone the application should be struck from the roll. That notwithstanding, the applicant could not show that it would not obtain substantial redress if it were to follow normal court process since it averred that it has already suffered damages and this means the horse has bolted and the applicant cannot argue that if the unlawful conduct of respondent is not arrested immediately damages would be suffered, respondent argued.

Legal principles and analysis

[13] Urgency is regulated in terms of rule 6(12) of the Uniform Rules of Court which provides that:

- (a) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as is reasonably practicable be in terms of these rules) as it deems fit.
- (b) In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent **and** the reasons why the applicant claims that

applicant could not be afforded substantial redress in due course. (Underlining added).

[14] It can be deduced from the foregoing that a party is enjoined to satisfy two requirements: first, that the matter is indeed deserving of the urgent attention of the court and that urgency is not self-created. Second, that the applicant would not be afforded substantial redress in due course.

[15] A party that seeks to obtain redress on the basis that its matter is urgent is enjoined to ensure that it does not adopt a laissez-faire posture and must avoid rushing to jump the queue. Self-created urgency implies a degree of contrivance to queue jump. An applicant that is fully apprised of its right and any harm that it may suffer cannot wait until the last possible moment. To launch an urgent application for purposes that would constitute abuse, in particular, a purpose which would defeat or delay the lawful exercise of the rights of others would not be countenanced.

[16] The courts have, however, encouraged litigants to engage each other to resolve disputes, thereby avoiding the need to rush to court and clog the urgent roll with matters that could have been resolved *inter se*. The Constitutional Court held in *South Africa Informal Traders Forum and Others v City of Johannesburg and Others*¹⁰ that "...it was only prudent and salutary that the applicants first sought to engage the city before they rushed to court." This exception to the general rule cannot be used as a ploy to justify an unreasonable delay in engaging a party who has spurned the invitation to resolve the dispute amicably. I find the reason advanced that the delay of approximately 3 weeks was due to negotiations to resolve the dispute, unsustainable.

[17] The second explanation for the delay was that the applicant was entitled to written reasons in terms of PAJA. In retort, the respondent contends correctly that reasons were furnished over the phone, and the applicant could have approached the court without awaiting written reasons. I find that it would not have been irregular for the applicant to launch the urgent application for the review whilst awaiting reasons. Rule 53(4)¹¹ of the Uniform Rule permits a party to supplement its papers once the record has been filed. The Constitutional

¹⁰ 2014 (4) SA 371 CC at 37-38

¹¹ Rule 53(4) provides that "The applicant may within 10 days after the registrar has made the record available to the applicant, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of such applicant's notice of motion and supplement the supporting affidavit."

Court stated in *Umkhonto Wesizwe Political Party*,¹² where a party sought to file a supplementary affidavit, as the reasons were furnished late that:

“Due to the urgent nature of the matter, the Commission brought the main application in this Court before the Electoral Court’s reasons were delivered and this necessitated the filing of a further affidavit. In the circumstances, the Commission is granted leave to file the supplementary affidavit.”¹³

[18] The contention by the applicant that it had to await reasons is untenable as the above authority suggests that a party may proceed to launch court papers without reasons at all. The applicant’s position is worsened by the fact that PAJA upon which the request for reasons is predicated is not applicable to this *lis*. This is informed by the respondent’s submission that section 3(5) of PAJA provides that:

“Where an administrator is empowered by any empowering provision to follow a procedure which is fair but different from the provisions of subsection (2), the administrator may act in accordance with that different procedure.”

[19] The respondent contended that the provisions of regulation 22D which are applicable, are not impugned by the applicant on the basis that they are not fair and to this end the applicant should have placed its mast on regulation 22D which makes no provision that reasons must be provided in writing.

[20] As if this is not enough, the applicant failed to pursue the matter on the date it had been set down on 30 December 2025 but removed it to a later date. The court held in *In re: Several Matters on the Urgent Roll*¹⁴ at para 18 that

¹² *Electoral Commission of South Africa v Umkhonto Wesizwe Political Party and Others* (CCT 97/24) [2024] ZACC 6; 2024 (7) BCLR 869 (CC); 2025 (5) SA 1 (CC) (20 May 2024).

¹³ Id at para 17.

¹⁴ (2012) 4 All SA 570 (GSJ)

“Those matters that justify a postponement to allow the respondents to file affidavits should in my view summarily be removed from the roll so that the parties can set them down on the ordinary opposed roll when they are ripe for hearing, with costs reserved.” (underlining added).

[21] In the premises the applicant did not only unduly delay the launching of the proceedings for a period of 15 days after the blocking order was issued but also postponed the matter to a later date. The applicant did not act with the requisite haste alternatively urgency, if any, was self-created.¹⁵ In addition, I find that this had the effect of unnecessarily burdening the urgent court roll which court’s resources are already overstretched. This cannot be countenanced.

[22] The respondent correctly submitted that ordinarily voluminous matters should be preceded by a request for a special allocation from the Office of the Judge President. It was held in *In re: Several Matters on the Urgent Roll*¹⁶ that:

“Further, if a matter becomes opposed in the urgent court and the papers become voluminous there must be exceptional reasons why the matter is not to be removed to the ordinary motion roll. The urgent court is not geared to dealing with a matter which is not only voluminous but clearly includes some complexity and some novel points of law. See *Digital Printers vs Riso Africa (Pty) Limited* case number 17318/02, an unreported judgment of Cachalia J delivered in this division.” (Underlining added).

[23] *In casu*, the respondent contended that the application has pages in excess of 800 and should have been enrolled on a special court and proceeding to the urgent court is therefore irregular. This was aggravated by the fact that the *dies* prescribed by the applicant were unreasonably short. The respondent in a review application is entitled to 15 days within

¹⁵ With regard to self-created urgency it was stated in *Roets N.O and Another v SB Guarantee Company (RF) (Pty) Ltd and Others* [2022] JOL55628 (GJ) at [26] where the court stated that “... urgency which is self-created in a sense that an applicant sits on its laurels or takes its time to bring an urgent application can on its own lead to a decision that a matter is struck off the roll.” See also *Van Der Merwe and Others v Nel NO and Others* (2483/2023) [2023] ZAECKHC 86 (11 August 2023) where it stated that “Urgent is diminished where the litigant takes longer to act from the date of the event giving rise to the proceedings. In short, a party seeking relief must come to the court immediately or risk failing on urgency”. Also, *Association of Mineworkers & Construction Union & Others v Northam Platinum Ltd & Another* the court held that “... the more immediate the reaction by the litigation to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to court immediately, or risk failing on urgency.

¹⁶ (2012) 4 All SA 570 (GSJ) at para 15

which to furnish the record and in this instance the records were required within 5 hours. This is certainly unreasonable and unfair to a party for a matter which was postponed. Worse, all these took place during the December festive season when the employees were already on leave. I find that the applicant was indeed inconsiderate and has failed in its papers to address prejudice suffered by the respondent and other litigants. Fagan J stated in *In I L & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd & another; Aroma Inn (Pty) Ltd v Hypermarket (Pty) Ltd & another*¹⁷ that:

“It is clear from the requirements set out in Rules 27 and 6(12) that the Court's power to abridge the times prescribed and to accelerate the hearing of the matters should be exercised with judicial discretion and upon sufficient and satisfactory grounds being shown by the applicants. The major considerations normally and in these two applications are three in number, viz the prejudice that applicants might suffer by having to wait for a hearing in the ordinary course; the prejudice that other litigants might suffer if the applications were given preference; and the prejudice that respondents might suffer by the abridgment of the prescribed times and an early hearing.” (Underlining added).

[24] The reasons for the urgency advanced by the applicant boil down to the fact that there would be loss of clients and profits. This is what is referred to in common parlance as commercial urgency. Whilst it is noted that commercial concerns could lay a basis for a party to argue urgency this, without more, would not be sufficient and a party is required to demonstrate exceptional circumstances. Though in the context of an employee, it was held in *Munthali*¹⁸ that.

“The issue of whether financial hardship is a basis of seeking urgent relief has received attention in this and other courts. In other decisions, it has been held that as a general principle, financial hardship does not establish a basis for urgency. It has been held that the mere fact that irreparable financial losses have been suffered or would be suffered by the applicant was not, by itself, sufficient ground to acquire the requisite urgency necessary to justify a departure from the ordinary court rules. In other decisions however, it has been accepted that the general principle may be

¹⁷ 1981 (4) SA 108 (C).

¹⁸ *Munthali v Passenger Rail Agency of SA* (2021) 42 ILJ 1245 (LC),

departed from if exceptional circumstances are established, depending on the merits of each case.”¹⁹

[25] Having failed to establish the first leg as set out in rule 12 of the Uniform rules then *cadit questio*. There is no need to interrogate whether there would be substantial redress since a party is required to satisfy both requirements. It’s a fallacy that if a party can demonstrate that it would not obtain substantial redress in due course then it follows that the application is deserving of a space in an urgent court. The applicant is required to prove both that the application is urgent and that it would not obtain substantial redress in the long run. In any event the respondent has demonstrated that the horse has bolted as the applicant has already stated that the blocking order has damaged relationships with clients, undermined confidence with stakeholders and as such the recourse lies in a damages action.

Conclusion

[26] In the premises the applicant has failed to demonstrate that the matter deserves a space in the urgent court alternatively that urgency was compromised by the postponement and further that urgency, if any, was not self-created. The applicant has further failed to demonstrate potential prejudice that it would suffer as the horse has bolted. In the result the application is bound to be struck from the roll.

Costs

[27] The respondent submitted that the conduct of the applicant warrants a punitive costs order. The papers were voluminous. The *dies* prescribed were too short and unreasonable. The pressure to comply timeously was unreasonable including that all these were during festive times. It is trite that the question of costs is within the discretion of the court. It was held in *Bam*²⁰ that “[T]he general rule relating to costs is that costs follow the result. Reimbursing a successful party of his or her out of pocket expenses is a settled principle which brooks no further ventilation.” Ordinarily such order is warranted in exceptional circumstances where the conduct of the litigant attracts the wrath of the court. The

¹⁹ *Id* at [8].

²⁰ *Bam v Holtzhausen and Others* (2024/097438) [2025] ZAGPPHC (21 February 2025).

Constitutional Court held in *Mkhatshwa*²¹ “... that the purposes of punitive costs, being an extraordinarily rare award, are to minimise the extent to which the successful litigant is out of pocket and to indicate the court’s extreme opprobrium and disapproval of a party’s conduct.”²² The launching of these proceedings under the circumstances chronicled by the respondent warrants costs at a punitive scale. The contentions by the applicant did not persuade me differently.

Order

[28] *The application is struck from the roll for lack of urgency with costs with on attorney and client scale including counsel costs on scale C.*



NOKO J
Judge of the High Court.

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Date of Hearing: 6 January 2026.

Date of Judgment: 19 January 2026.

Appearances:

For the Applicant: JPV McNally SC, instructed by Webber Wentzel.

For the Respondent: T Govender, instructed by Werksmans Attorneys.

²¹ *Mkhatshwa and Others v Mkhatshwa and Others* [2021] ZACC 15.

²² *Id* at para 21.