REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 054716/2025

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	REVISED:

8 September 2026

DATE SIGNATURE

In the matter between:

CUBA DUMAKUDE **APPLICANT**

and

BIDVEST BANK LIMITED **FIRST RESPONDENT**

COMMISSIONER OF THE SOUTH AFRICAN REVENUE SERVICE **SECOND RESPONDENT**

JUDGMENT

TWALA J

Introduction

[1] This is an application in which the applicant Mr Cuba Dumakude, sought an order against the respondent in the following terms:

1.1 directing the respondent to immediately unfreeze and release all funds held in the applicant's bank account, Account No. 08197202001, amounting to R448 838.35 (Four Hundred and Forty-Eight thousand Eight Hundred and Thirty-Eight Rand and Thirty-five cents).

1.2 declaring the respondent's continued freezing of the applicant's account since 18 February 2025 to be unlawful, unreasonable, and in violation of:

1.2.1. The Common Law duty of fairness and reasonableness in contractual relations.

1.3 ordering the respondent to pay the costs of this application on an attorney-client scale.

[2] It is noteworthy that this application initially served before the urgent court where it was removed from the roll to allow the applicant an opportunity to file an application to join the second respondent in these proceedings. Further, the application is vehemently opposed by the respondents who filed their answering affidavits.

[3] At the commencement of the hearing, counsel for the second respondent informed the court that the second respondent was no longer persisting with its point in limine which was based on the provisions of section 11(4) of the Tax Administration Act.

I propose to refer to the parties in this judgment as the applicant and to the first respondent as Bidvest Bank and the second respondent as SARS.

Factual Background

[4] The genesis of this case is that on 8 October 2024 a company known as Hill Side Trading and Projects CC with registration number 2013/157599/07 *("Hill Side Trading")* filed VAT returns with the second respondent which totalled a refund claim amounting to R3 279 667.63. The sole director of Hill Side Trading is Ms Nocawe Ursula Sekhurwane.

[5] On 13 February 2025, SARS paid a VAT refund to Hill Side Trading in the sum of R3 279 667.63 and on 17 February 2025 Hill Side Trading made a payment from its Capitec Bank account of the sum of R900 000 into the applicant's Bidvest Bank account, Account No. 08197202001. On 20 February 2025, Capitec Bank sent an electronic mail to FNB, Standard Bank and Old Mutual advising that its client, Hill Side Trading, has been implicated in fraud involving SARS and that the proceeds have been sent to accounts to various banks and identified the R900 000 which was paid by Hill Side Trading into the account of Miller Trading Electrician held at Bidvest Bank with the applicant's account number. On the same day the applicant's account was frozen and that galvanised the applicant to launch these proceedings.

[6] On 1 April 2025, SARS launched its investigation into the authenticity of some of the invoices submitted on behalf of Hill Side Trading in support of its VAT claims. On 8 April 2025, SARS issued a Third-Party Appointment in terms of Section 179 of the Tax Administration Act[1] *("TAA")* to Bidvest Bank to secure a total amount of R450 995.51. On 9 April 2025, SARS proceeded to South African Police Service to lay criminal charges against Hill Side Trading and on 10 April 2025 issued a notice appointing Bidvest Bank as a Third Party in terms of section 179(1) of the

[1] Act 28 of 2011

TAA in respect of the R900 000 which was a refund not properly payable to the applicant's account number 08197202001.

[7] During its investigation, SARS established that the invoices submitted on behalf of Hill Side Trading were Fraudulent. The alleged suppliers confirmed in affidavits that the invoices purported to have been issued by them were not authentic and that they have never conducted business nor was Hill Side Trading their customer. The investigation further established that the registered business address was not a business premises, but rather a daycare centre.

Legal framework

[8] It is appropriate at this stage to restate the provisions of the Tax Administration Act which are relevant to the discussion that will follow and they state the following:

> "179. Liability of third party appointed to satisfy tax debts
>
> (1) A senior SARS official may authorise the issue of a notice to a person who or owes or will hold or owe any money, including a pension, salary, wage or other remuneration, for or to a taxpayer, requiring the person to pay the money to SARS in satisfaction of the taxpayer's outstanding tax debt.
>
> (2) A person that is unable to comply with a requirement of the notice, must advise the senior SARS official of the reasons for the inability to comply within the period specified in the notice and the official may withdraw or amend the notice as is appropriate under the circumstances.
>
> (3) A person receiving the notice must pay the money in accordance with the notice and, if the person parts with the money contrary to the notice, the person is liable for the money.
>
> (4) SARS may, on request by a person affected by the notice, amend the notice to extend the period over which the amount must be paid to SARS, to allow the taxpayer to pay the basic living expenses of the taxpayer and his or her dependants.
>
> (5) SARS may only issue the notice referred to in subsection (1) after delivery to the tax debtor of a final demand for payment which must be delivered at the latest 10 business days before the issue of the notice, which demand must set out the recovery steps that SARS may take if the tax debt is not

paid and the available debt relief mechanisms under this Act, including, in respect of recovery steps that may be taken under this section—

(a) the tax debtor is a natural person, that the tax debtor may within five business days of receiving the demand apply to SARS for a reduction of the amount to be paid to SARS under subsection (1), based on the basic living expenses of the tax debtor and his or her dependants; and

(b) if the tax debtor is not a natural person, that the tax debtor may within five business days of receiving the demand apply to SARS for a reduction of the amount to be paid to SARS under subsection (1), based on serious financial hardship.

(6) SARS need not issue a final demand under subsection (5) if a senior SARS official is satisfied that to do so would prejudice the collection of the tax debt."

[9] For completeness, it is opportune to restate the provisions of the Terms and Conditions of Bidvest Bank[2] which are relevant for the discussion that follows and which are:

"E. General Terms and Condition

34. Suspension of accounts

34.1. Bidvest Bank ('the Bank') endeavours to prevent criminal activity including money laundering and terrorist financing.

34.2. Accordingly, if the Bank considers it necessary, or if applicable South African or international laws, rules, regulations, restrictions or policies ('applicable law') require it to do so, the Bank may, in its sole discretion:

34.2.1. restrict the use of or suspend your card and/or account immediately without notice to you, if it suspects that your card or account has been or is being used fraudulently, negligently or unlawfully for money laundering activities, financing terrorist and related activities, or in contravention of applicable law.

[2] Terms and Conditions Bidvest Bank Grow Account

34.2.2 terminate this agreement, resulting in the closure of your accounts, and prevent you from using the Bank's services, products or channels at any time after the Bank gives you reasonable notice of such termination

34.2.3 the above process is to protect any affected party as well as the Bank against criminal activity."

Discussion

[10] There is no merit in the applicant's contention that, by freezing its account on 20 February 2025, Bidvest Bank committed an unlawful act which was unreasonable and a violation of the common law duty of fairness and reasonableness in contractual relations. I say so because the relationship between a bank and its customer is governed by contract. The terms and conditions of the agreement between the bank and its customer or client are binding on both parties. Clause 34 of the terms and conditions of Bidvest Bank entitles the Bank, as it endeavours to prevent criminal activity including money laundering and terrorist financing, and if it considers it necessary or certain laws require it to do so and in its sole discretion, to immediately suspend or restrict the use of the account without notice to the customer or client.

[11] I do not agree with the applicant's argument that the e-mail received by Bidvest Bank from Capitec Bank informing it that Hill Side Trading, who is its client, had been implicated in wrongdoing in defrauding SARS and that the proceeds of that fraud had been sent to various bank accounts, including the bank account of the applicant was just hearsay. Bidvest Bank was entitled to rely on this information which was from another financial institution and does not require to confirm same by way of confirmatory affidavit. The suspicion rested on solid and reasonable grounds in that it came from a bank in which Hill Side Trading hold an account from which the amount of R900 000 was paid.

[12] In *Mabona and Another v Minister of Law and Order and Others*[3] which was quoted with approval by the Full Court in this Division in *Mahlaba v Minister of Police*[4], the court stated the following:

> "That a suspicion must be based on objective facts and that a reasonable person in the arrestor's position would have considered there to be good and sufficient grounds for the suspicion. Mere conjecture or hunch is insufficient."

[13] It is therefore unavoidable to conclude that the information received by Bidvest Bank from Capitec Bank is not hearsay or mere conjecture which requires to be proven or supported by confirmatory affidavit. I therefore find that the decision of Bidvest Bank to freeze the account of the applicant was not unlawful since the suspicion raised by the electronic mail was based on objective facts and reasonable grounds. Bidvest Bank was contractually entitled, without notice to the applicant, to suspend or freeze the account of the applicant as empowered by clause 34 of its terms and conditions.

[14] Counsel for the applicant contended that SARS was not entitled to issue the Third-Party Notice for the applicant is not a tax debtor as contemplated in section 179 of the TAA and did not issue a final demand for payment ten days before the issue of the notice. I do not agree. The applicant ignores the provisions of section179 (6) which provides that SARS need not issue a final demand under subsection (5) if a senior SARS official is satisfied that to do so would prejudice the collection of the tax debt. Further, the notice was not issued against the applicant but against Bidvest Bank, who is holding the funds belonging to Hill Side Trading. The tax debt is owed by Hill Side Trading and not the applicant. The notice requires Bidvest Bank to pay the money in holds to SARS in satisfaction of Hill Side Trading's tax debt.

[15] In this matter, the senior SARS official, Mr Dillo Nyaphudi, authorised the issuance of the Third-Party Notice without a final demand. The evidence before the court

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[3] 1988 (2) SA 654 (SE)
[4] (A2024/094541) [2026] ZAGPJHC 24 (14 January 2026)

establishes that Hill Side Trading had committed fraud by submitting falsified VAT returns. The refund of R3,279,667.63 was not properly payable to Hill Side Trading. The applicant's account had already been frozen by Bidvest Bank as the funds were at risk of being dissipated if not secured. Under the circumstances, it is clear that issuing a final demand to Hill Side Trading would have prejudiced the collection of the tax debt.

[16] In *CRRC E-Loco Supply (Pty) Ltd v Commissioner for the South African Revenue Service*[5] the Court stated the following:

> "There is little doubt that SARS had been entitled to issue the third-party notices and thereby recover the funds in question to satisfy an existing tax debt. The fact that the tax debt may be subject to an objection does not detract from this. See *Metcash Trading Ltd v CSARS* 2001 (1) SA 1109 (CC) at 1118.[6]
>
> The highwater mark of CRRC's complaint is that the third-party notices had not been preceded by a final demand. On the facts of this case, I conclude that the senior SARS official in question had sufficient grounds to justify his decision to issue the notices without such demand as contemplated in section 179(6) of this TAA."[7]

[17] In *Christoffel Hendrik Wiese and Others v CSARS*[8] the Supreme Court of Appeal stated the following when dealing with the provisions of section 179 of the TAA:

> "The further sections of chapter 11 cater for specified instances of recovery of tax debts due by a taxpayer from third parties. Section 179 envisages the appointment of a so-called agent. The section allows SARS to recover payment from a person who holds or will hold money due to the taxpayer. In effect, the 'agent' is notified to pay that money to SARS to satisfy a taxpayer's 'outstanding tax debt'. This form of recovery plainly does not require that the 'tax debt' be anything other than 'payable', in the sense that a date for payment of

[5] (37766/2021) [2022] ZAGPPHC 527; 85 SATC 463 (18 July 2022)
[6] Id para 5.8
[7] Id para 5.9
[8]1307/2022) [2024] ZASCA 111; [2024] 4 All SA 108 (SCA); 2025 (1) SA 127 (SAC) 87 SATC 14 (12 JULY 2024)

an amount owed to SARS has been set. Recovery from an appointed agent can occur even if the underlying indebtedness is subject to challenge.[9]

[18] I am of the considered view therefore that the third-party notice was validly issued and that Bidvest Bank was legally obliged to comply with it. Therefore, the applicant's argument that it was not the tax debtor as envisaged in section 179, and that no final demand was made is misplaced.

[19] Since the applicant seek a final interdict requiring Bidvest Bank to release the funds to him, he must meet the well-established requirements of a final interdict which are a clear right, and injury actually committed or reasonably apprehended and the absence of similar remedy or protection which he may obtain in due course.

[20] The applicant's case falls on the first requirement of a clear right, which needs to be protected. On its investigation, SARS has established that the invoices submitted in support of the VAT claim of Hill Side Trading were fraudulent and that the alleged suppliers of Hill Side Trading all deny having any dealings with nor issuing such invoices to Hill Side Trading. In a nutshell, Hill Side Trading was not entitled to the VAT refund as claimed and received from SARS. The applicant received payment of R900 000, which it was not entitled to, for the applicant failed to demonstrate that it has any legitimate business dealings with Hill Side Trading which justified the payment.

[21] What is telling about the case of the applicant is that Hill Side Trading paid this money in his personal account, which has been inactive and dormant for some time, and not in his business account. The applicant could not even provide supporting documentation such as invoices, delivery notes or a contract between himself and Hill Side Trading or any other entity it is doing business with. Worse for the applicant, it attempted to withdraw significant sums in cash and make purchases at

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[9] Id para 38

various retailers shortly after the deposit was made which is consistent with the dissipation of funds rather than the conduct of a legitimate business.

[22] I am of the considered view that the funds which were deposited by Hill Side Trading into the applicant's bank account held with Bidvest Bank are the proceeds of unlawful activity as a result of fraud committed by Hill Side Trading against SARS. As such, these funds are not per se the property nor do they belong to the applicant who is holding the funds in his bank account with Bidvest Bank. The ineluctable conclusion is therefore that the applicant has failed to establish a clear right to the funds – thus the application falls to be dismissed.

[23] In the result, the following order is made:

The application is dismissed with costs on Scale B.

TWALA M L
JUDGE OF THE HIGH COURT,
SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: **24 August 2026**

Date of Judgment: **8 September 2026**

Appearances

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This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the order is deemed to be the 8 September 2026.