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

Case Number: 2025-247149

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
28 July 2026

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
SUMBEDZO 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 LIMITED.	Eighth Respondent

JUDGMENT

JOHNSON, AJ

Introduction

[1] This is an application to review and set aside a decision ('the blocking order") taken by sixth respondent on 24 November 2025 to block withdrawals from a bank account ("the relevant bank account") with account number 3[…], held by the applicant ("Kastelo") with the eighth respondent (Access Bank), which prevents the withdrawal of funds.

[2] The blocking order was issued in terms of Regulations 22A and/or 22C of the Exchange Control Regulations[1] ("the Regulations").

[3] The Grounds of Review:

The applicant relies on the following grounds of review:

a. Procedural fairness and not being afforded *audi alteram partem*:

The right to procedural fairness in terms of Section 33 (1) of the Constitution.

b. Adequate reasons:

A person whose rights are adversely affected by an administrative decision has a right to be given written reasons which are intelligible and informative-section 5(1) of PAJA[2].

c. Procedural Irrationality.

d. Substantive irrationality and acting for an ulterior purpose.

e. Sections 6(2)(e)(vi), 6(2)(f) and 6(2)(e)(ii) of PAJA.

f. Taking into account irrelevant considerations and ignoring relevant ones-section 6(2)(e)(iii) of PAJA.

g. Mistakes of fact.

h. Errors of Law.

[1] Promulgated by Government Gazette Notice R1111 of 1 December 1961 in Extraordinary Government Gazette No 123.
[2] Promotion of Administrative Justice Act 13 of 2000.

i. Reasonableness-section 6(2)(h) of PAJA.

i. Authority: A decision will only be lawful if the person who took it was authorised to take it under the empowering provision. To the extent that there has been any delegation, there must be proof of delegation from the authorised decision -maker.

j. Fettering and rigidity: decisions taken because of unauthorised or unwarranted dictates of another person constitute administrative action that is reviewable.

j. Apprehension of Bias: the administrator who makes the decision must be unbiased or reasonably perceived to be impartial.

k. The decision must be based on reasonable grounds to suspect a contravention of the Regulations.

l. Procedural fairness requires that adequate notice of the nature and purpose of the proposed administrative action- section 3(1) of PAJA.

m. A person adversely affected by and administrative decision is entitled to be heard prior to the decision being made - section 3(2)(b)(i) of PAJA.

Factual Chronology

[4] On 24 November 2025, the sixth respondent ("Malherbe"), issued a blocking order in respect of the relevant bank account held by the Kastelo with Access Bank, blocking withdrawals from the relevant account.

[5] Kastelo was made aware of the blocking order on 25 November 2025.

[6] The blocking order was premised on there being reasonable grounds to suspect that Kastelo entered into or was party to foreign exchange transactions in contravention of the Exchange Control Regulations and obtained enrichment from such transactions.

[7] According to Kastelo, Malherbe from FinSurv contacted a client of Kastelo with queries about Kastelo. The client was assisted by Kastello with relevant

information for the queries. The client responded to the queries rebutting FinSurv's incorrect assumptions about Kastelo. Mr Burke, the executive director and CEO of Kastelo and Mr Craffert from Kastelo were copied in on email responses to Finsurv on 24 November 2025 and Mr Craffert offered to provide FinSurv any additional information it may have required at this stage.

[8] When Kastelo was made aware of the blocking order on 25 November 2025 it repeatedly made attempts to engage with FinSurve to obtain reasons, the record of decision and other relevant information. Ultimately, written reasons were provided on 15 December 2025.

Issues for Determination

[9] Whether the SARB's decision to issue a blocking/freezing order was made in contravention of the Exchange Control Regulations, the Currency and Exchanges Act and/or the principle of legality, including requirements by SARB officials to:

a. Act in a procedurally fair manner, including affording the applicant adequate notice, audi alteram partem, and acting without a reasonable apprehension of bias;

b. Act in a procedurally rational manner, including adopting a process which would and did enable the SARB to obtain all the relevant information; and/or

c. Act lawfully, rationally and reasonably, including acting within their statutory authority, being guided by objectively ascertained and correct facts, taking relevant considerations into account and discounting irrelevant ones, not committing an error of law, exercising its powers in line with the purpose of the exchange-control scheme, acting within the scope of their own guidelines for a reasonable decision-making, basing their decision on reasonable grounds, and not unlawfully fettering its discretion.

d. What standards and grounds of review are applicable to the review of the blocking/freezing order;

e. Whether the SARB officials' decision to issue a blocking/freezing order should be set aside.

[10] Kastelo contends that it is a registered Financial Services Provider. It offers ordinary South Africans an algorithmic trading product whereby the clients mandate Kastelo to deploy their funds, including loan funds, into an automated trading strategy that identifies pricing differentials in the crypto market, executes trades on their behalf and repatriates the resulting value to South Africa (in ZAR) at the end of each trading cycle, sometimes daily or multiple times per day. This algorithmic trading model is unable to operate unless the value returns to South Africa. The funds are converted to foreign currency, externalised and returned in ZAR.

a. A client confers on Kastelo a discretionary investment mandate in terms whereof Kastelo is authorised without the need to obtain prior instructions in respect of each individual transaction to make and implement investment and trading decisions on behalf of the client.

b. Kastelo is statutorily empowered to deploy client capital in its discretion across the financial product categories in which it is licenced to operate.

c. A client undergoes an onboarding process which includes completion of an application form and FICA due diligence. identification verification, proof of address, tax details, mobile number verification, biometric authorisation, complete liveness. Once the agreement is concluded, a special power of attorney is required.

d. Where a client seeks to participate using a loan/credit facility advanced by Kastelo, the client makes a credit application and undergoes a credit -vetting process in terms of the National Credit Act,[3] and provides supporting financial documents and an affordability assessment is done. Not all applications are approved, and facilities are declined where the client is unable to service the facility from its own financial means.

Submissions of Mr McNally

[3] 34 of 2005.

[11] The SARB decided to block withdrawals from the bank account of Kastelo at Access Bank which were used as fund flow in Kastelo's algorithmic trading model. The account holds funds for and on behalf of clients. The effect of the blocking order halts an indispensable aspect of Kastelo's business because it locks clients' funds and cripples Kastelo's ability to conduct its business and meet its client obligations.

[12] The blocking order has had a devastating effect on Kastelo's reputation, and it has the potential to put Kastelo out of business.

[13] No prior notice was given to Kastelo by FinSurv. Kastello was not provided with any reasons or information and was not given an opportunity to make representations prior to the blocking order. Resultantly, Kastelo was denied its audi rights.

[14] Kastelo took all reasonable steps to avoid approaching the Court, including engaging with FinSurv to resolve the matter, to no avail. The SARB was slow to respond and took three weeks to provide written reasons, was unwilling to engage or to consider lifting the blocking order.

[15] There was no factual basis on which Kastelo's activities could pose any risk of funds being concealed, dissipated or spirited away and no basis for drastic, freezing measures. The blocking order is patently unlawful and unconstitutional.

[16] The SARB adopted a one -sided, rigid and procedurally irrational process. The blocking order was implemented on the strength of untested, incorrect and biased allegations and an echo-chamber engagement with a small number of Kasteo's clients. The SARB failed to source relevant information or engage directly with Kastelo to achieve a rational outcome. No proof was provided that Malherbe was authorised to issue the blocking order.

[17] The reasons advanced for the blocking order underscores the illegality of the blocking order. The blocking order is inadequate and was issued unlawfully, irrationally, unreasonably and in a procedurally unfair manner.

[18] Kastelos algorithmic trading model is lawful in structure and implementation. It is a digital platform in which users transact, save and access financial products in a more efficient and streamlined manner without the cost structures of conventional banking. It allows South African residents to use their foreign investment allowances with Kastelo as their agent and all externalised value is repatriated to South Africa in ZAR at end of a trading cycle. The model is not a permanent export of value and operates within the framework of the exchange control scheme.

[19] The blocking order is not authorised on interpretation of the Exchange Control Regulations (1961) and made in the absence of jurisdictional facts required for the issue of a valid blocking order and is substantively irrational, unreasonable, unlawful, overboard and disproportionate.

[20] Mr McNally submitted that it is inadequate to recite an empowering provision and not explain on what basis the powers in the provision are being exercised. He contended that on this basis alone the blocking order was made without good reason.

[21] It was incorrectly stated by FinSurv that the foreign currency is for the benefit of Kastelo and that the clients do not participate on their own account and risk.

[22] The Regulations allow a limited export of foreign currency from South Africa. A Single Discretionary Allowance (“SDA”) allows a person to export up to R1 million and a Foreign Investment Allowance (“FIA”) allows a person to export up to R10 million. According to its advertising material on its website, clients who participate successfully will receive a bonus in the amount of R2000.00 for their SDA investment and R10 000.00 for their FIA investment.

[23] The SARB is an organ of state established in terms of Section 232 of the Constitution.[4] The purpose of the SARB in terms of section 3 of the South African Reserve Bank Act.[5]

[4] Act 108 of 1996.
[5] Act 90 of 1989.

> “The primary objective is to protect the value of the currency of the Republic in the interests of balanced and sustainable economic growth in the Republic”.

[24] The SARB through FinSurv is responsible for the daily administration of exchange control in South Africa.

[25] Regulation 22E provides that the Minister of Finance delegates the SARB specifically the Governor, Deputy Governor and Head of FinSurv, powers, functions and duties of the Treasury under the regulations:

[26] The central purpose of exchange controls is to protect the South African economy through regulating inflow and outflow of capital.

[27] It was argued that FinSurv exercised powers in terms of Reg 22A and 22C by issuing the blocking order. Such public powers are circumscribed by the Constitution, statutory and common law requirements which provide a basis for the review of the blocking order. The blocking order is administrative action as defined in PAJA.[6] It constitutes a decision of an administrative nature taken by an organ of state exercising a public power or performing a public function in terms of an empowering provision, and the exercise of that power adversely affects rights and has a direct external legal effect. Therefore, FinSurv’s conduct must be consistent with PAJA and is reviewable on that basis. Finsurv is an organ of state bound by section 1(c) of the Constitution and its actions must be consistent with the Constitution and /or the common law principle of legality. It must act in a procedurally fair and rational manner.

[28] The information from Kastelo was not before FinSurv when the decision was taken.

[29] The decision must be authorised by law. Finsurv may only act within the powers conferred by the Exchange Control Act and/or Regulations. The jurisdictional facts required by the empowering provision must exist objectively.

[6] Act 3 of 2000.

This Includes reasonable grounds to suspect contravention of the Currency and Exchange Control Act[7] and /or Regulations.

[30] FinSurv may not exercise blocking powers arbitrarily or for ulterior, punitive or collateral purposes that fall outside the purposes for which the powers were conferred. A decision must be rationally connected to the purpose for which it was taken.

[31] FinServ must prove all the information it obtained from all relevant parties which is needed to make a rational and lawful decision. The decision must be one that a reasonable decision maker could reach. The decision-maker must apply his mind, and due consideration must be given to all the material and relevant facts. The decision cannot be influenced by errors of law or fact. The decision is reviewable under Reg 22D read with section 9 of the Currency and Exchange Act, PAJA and the common law principle of legality. It Constitutes a defensive or collateral review as it is a defence to an enforcement action.

Legal Principles and Regulations

[32] Exchange controls are used, inter alia, to ensure the stability of the economy and prevent exchange rate volatility.

[33] Section 3 of the Reserve Bank Act details the SARB's legislative objectives and enjoins the SARB to do the following:

[34] The primary objective of the Bank

33.1 The primary objective of the Bank shall be to protect the currency of the Republic in the interest of balanced and sustainable economic growth in the Republic.

33.2 In addition, the Bank is responsible for protecting and maintaining financial stability as envisaged in the Financial Sector Regulation Act, 2017.

[35] The rationale for the existence of exchange control prohibitions:

[7] Act 9 of 1933.

[36] Exchange control is primarily governed by section 9 of the Currency Act, as read with the Exchange Control Regulations.

[37] The Exchange Control Regulations prohibit various transactions, and they provide that a number of other transactions may only be entered into with permission of the Treasury (or persons authorised by the Treasury), in accordance with such conditions as the Treasury or such authorised person may impose.

[38] The rationale for the existence of exchange control prohibitions is solely concerned with the capacity of the impugned conduct to "influence total money demand":

An example of a prohibition which is germane to the present application:

a. Pursuant to the Regulations, all persons are prohibited from, without the requisite permission, taking out or transferring money from the Republic, or entering into a transaction whereby capital, or any right to capital, is directly or indirectly exported from the Republic- Regulation 3 and 10(1)(c).

b. That this conduct should be prohibited, as it stands to reason that the exportation of capital outside the Republic would have the potential to be prejudicial to the value of the currency and financial stability.

c. This is precisely the objective and mandate which the Reserve Bank Act allocates exclusively to SARB under Section 3 of the Reserve Bank Act, and it is precisely these matters which the Reserve Bank enjoins the SARB to regulate, foster and protect.

[39] The Regulations prescribe the use- or application of foreign currency, that is acquired from an Authorised Dealer, for any purpose other than that stated in his/her application to be the purpose for which it was required- Regulation 2(4)(a). This means that if foreign currency is acquired in order to pay for legitimate business expenses such foreign currency must be used for that purpose.

[40] When the rationale for the existence of Exchange Control is borne in mind, the reasons for this prohibition are also self -evident: where foreign currency is used for purposes of which the regulator is not aware, this is to the prejudice of the regulator's capacity to protect the value of the currency and protect and maintain financial stability where South African currency vis-à-vis the foreign currency is purchased in exchange for the relinquishment of South African currency, as the quid pro quo. The prejudice is however not limited to the fact that the regulator is not aware of the true nature for what the foreign currency is being utilised, but prejudice lies mainly in the fact that foreign currency is lost. Were it to be permitted it would be to the clear prejudice of the SARB's sole and exclusive capacity and duty to discharge that legislative function, and as a result, it would be prejudicial to the national fiscus and the National Revenue Fund.

[41] The Courts have recognised that the object of the Exchange control Regulations is to control foreign exchange in the public interest and to prevent the loss of foreign currency resources through the transfer abroad of capital assets held in South Africa,[8] and have held that exchange control is designed to protect South African foreign currency reserves and that the regulations promulgated to achieve this objective are regarded in a serious light.[9] These decisions of the courts accord with the rationale for the existence of exchange controls.

[42] In terms of regulation 22A of the Exchange Control Regulations, it is the money which is to be attached (or blocked) in respect whereof a contravention of any provision of the Exchange Control Regulations must have been committed, or in respect whereof some act or omission has been committed which is suspected to constitute such a contravention. Or it may be money which is suspected to have been involved in any such contravention or suspected to have been involved in any act or omission which is suspected to constitute any such contravention. It is therefore the money which must be 'tainted'.

[8] *South African Reserve Bank v Leathern NO* 2021 (5) SA 543 (SCA), paragraph 36.
[9] *Mangundhla and Another v South African Reserve Bank and Others* (2022/029979) [2026] ZAGPJHC 579 (1 June 2026).

[43] In terms of Regulation 22C of the Exchange control Regulations, even money which is not involved or suspected of having been involved in a contravention of the relevant regulations may be blocked, if it is required to enable the Treasury to make up the amount actually involved or suspected to have been involved in the contravention or suspected contravention of the latter regulation.

[44] Pursuant to section 9(2)(b)(i) of the Currency Act, the SARB, and thus FinSurv, have 36 months from the date of the blocking order to complete their investigation as referred to above.

[45] At the completion of the investigation, and consistently with the SARB's legislative objectives, should the Governor or Deputy Governor then be satisfied that contraventions have indeed occurred, and that a recovery of the amount involved in the contravention is justified; the money and/or goods so attached or money standing to the credit of a 'blocked account' may be forfeited to the state in terms of Regulation 22B of the Exchange Control Regulations.

The Evidence of Mr Malherbe ("Malherbe")

[46] Malherbe in his founding affidavit and supplementary founding affidavit described the business model of the applicant as follows;

"The business model described does not advance the case of the applicant. The business model is based on conjecture and speculation.

The very business model is suspected of contravening the Exchange Control Regulations. The dominant purpose of the business model is to circumvent the Exchange Control Regulations by facilitating acquisition of foreign currency for the applicant's own benefit through the use of third parties without permission from the department.

The explained business model contradicts the information brought to the SARB's attention concerning how the applicant's business model factually operates. The applicant uses individuals' single discretionary allowance ("SDA") of R1m and foreign investment allowance ("FIA") of R10m with the promise of a bonus of up to R2000.00 or R10000.00 respectively, to purchase foreign currency to acquire crypto assets abroad. Clients have no understanding of what is being done in their name through the applicant. Most are not aware that they hold bank accounts abroad. Using a person's SDA and FIA's is not permissible.

On the applicant's version, it has 891 clients: In an annual cycle the applicant has:

R891 million in individual SDA's

R8.9 billion in individual FIA's

These funds are converted to foreign currency and exited out of the Republic.

By 21 November 2025, R4 billion in foreign currency has been transferred abroad in the current calendar year.

Kastello relies on repatriation of the money as an argument. This displays profound misconception as to the core purpose and objectives of Exchange Control Regulations. The primary purpose is to protect foreign currency reserves of the Republic. The business model depletes this, and it is irrelevant that there was an inflow in any form other than foreign currency.

The risk to the fiscus is that foreign currency reserves of the Republic will be depleted."

[47] Malherbe in his affidavit states that he is *au fait* with the Currency and Exchanges Manual for Authorised Dealers or Exchange Control Regulations ("the Manual"), the Currency Act as well as the Reserve Bank Act. He is obliged and duty bound to be conversant with all the regulatory prescripts which regulate exchange control and all related legal authorities and jurisprudence.

[48] An authorised dealer is defined in the Manual as a person, in relation to gold, who is authorised by FinSurv to deal in gold and in relation to foreign exchange, a person authorised by FinSurv to deal in foreign exchange. Access Bank is the authorised dealer as Kastelo's bank.

[49] When considering the matter, he had regard to section A4, B2 and B4 of the Manual. He is aware of the requirements that treasury outsourcing companies ("TOC") and foreign brokers must comply with. Kastelo is a TOC.

[50] The record of decision contains all the provisions which he considered. He highlighted the following:

a. In terms of A,4(C)(i)(c), a TOC may not buy or sell foreign currency for its own account and may not hold foreign currency or borrow or lend foreign currency. He suspected that Kastelo contravened this provision.

b. A TOC may only act in the market as an intermediary, never as a principle, and should match a principal client with an authorised dealer- A.4(C)(i)(d);

c. The services provided by a TOC include identifying, monitoring and mitigating foreign risks as well as completing and handling of documentation, general administration of client' foreign exchange exposure and concluding spot and/or forward transactions with an authorised dealer- A.4(C)(i)(f);

d. All foreign exchange transactions must be concluded and settled between the authorised dealer and the client. The client must at all times be principal to all foreign exchange transactions and the exchange rate must be determined by the authorised dealer- A.4(C)(i)(g). Kastello is suspected to have contravened this provision because its clients are unaware of the foreign exchange transactions;

e. Authorised Dealers must ensure that all cross-border reporting and documentary evidence are at all times completed in the name of the client- A.4(C)(i)(i);

f. The TOC must at all times when requested to do so be able to demonstrate a complete audit trail, including the actual clients' instructions, for all transactions booked on behalf of the client- A.4(C)(i)(j);

g. Any fees charged for the services by a TOC must be invoiced and settled in Rand as well as be fully disclosed to the client- A.4(C)(i)(k). If this was done by Kastelo, the client would be aware of the concerned transactions;

h. FinSurv may impose any further conditions it may deem necessary A.4(C)(i)(n).

[51] Malherbe considered the evidence of Ms Gie, several whistleblowers and Cross Border Foreign Exchange ("CFE") results of Kastelo over the period 16 November 2021 to 21 November 2025. According to the results there was a substantial number of transactions over this period which was served as part of the record of decision as "SARB 12" and "SARB 18" in Excel format. The CFE disclosed a reasonable suspicion of exchange control contraventions in the amount of R4 billion. If an actual contravention/s of the Exchange Control Regulations is proved, this amount may be forfeited to the State. The preservation of funds through the blocking order is more than proportional from this perspective. This can only be determined in the boarder investigation.

[52] At paragraph 292 he states:

> "The purpose of a blocking order is not intended purely to prevent the dissipation of funds, but to preserve the funds, so as to establish the extent of the contravention of the Exchange Control Regulations, of which a reasonable suspicion exists at this stage."

[53] At paragraph 327 he states:

> " It has been established that at all relevant times the relevant funds were under the full and sole control of the applicant, the bank account is held in the name of the applicant and stands to its credit. On this basis only the applicant has a claim against such funds, and the funds are not to the credit of the clients."

[54] At paragraph 328 he states:

> "At this stage there is a reasonable suspicion that the applicant has contravened the Exchange Control Regulations. It is also important to note that, the Regulations clearly prohibit all foreign exchange transactions unless it has been generally or specifically permitted. It follows that absent the specific permission granted by FinSurv to the

applicant or general permission for the relevant business model, the transactions in question would be in contravention of the Exchange Control Regulations. Any argument to the effect that a certain type of transaction of business model is permitted simply because there is no specific stated prohibition on that type of transaction or business model in the Manual is therefore of no substance and is irrelevant. In any event there is some discourse between the applicants' business model and the Manual. The clients are seemingly unaware of the nature of the engagement and mandate between it and Kastelo. A TOC is required to have a mandate for each individual foreign transaction which Kastello seems to concede it does not do. If the Kastello invoices for its fees and services rendered it is unclear how the clients would be unaware of the foreign exchange effected in their names. It is apparent that the clients are unclear of the contractual arrangement with the applicant and what they ultimately agreed to."

[55] At paragraph 338 he states:

> "It is noteworthy that the flow of funds as described by the applicant only pertains to the "loan-based structure" where it loans the client money in order to access the clients SDA and FIA. It is murky whether these funds can ever properly be considered to be the clients funds in the circumstances."

[56] "The applicant simply does not have the permission to operate the business model in question, which is in contravention of the Exchange Control Regulation's."

[57] At paragraph 403 he states:

"Ms Gie is not the central driver of Finsurv's investigation and this contention by the applicant is inaccurate."

[58] At paragraph 409 he states:

"Finsurv's investigation is dictated by its legislative mandate. At paragraph 417, the applicant has not attached any communication or official letter from Bidvest to confirm this in relation to AD para 34 and 35".

[59] At para 419 he states:

> "It is correct that I considered Ms Gie's evidence and it formed part of the information, while not the sole information which I considered in reaching the decision that a reasonable suspicion existed that the applicant contravened the Exchange Control Regulation's, whether the info provided by Ms Gie is correct or not, cannot impugn my decision, unless the applicant is able to prove that on the probabilities, which I respectfully submit cannot be done by the applicants mere say so, without evidence. Moreover, even if the applicant is able to prove that it was not off boarded by Bidvest Bank for this reason, that does not vitiate all the other information before me which demonstrates that a reasonable suspicion exists that the applicant has contravened the Exchange Control Regulations's. As such the decision is not compromised by this allegation, which on the papers has not been dealt with, nor has the court been placed in a position to get to the bottom of this issue."

[60] At para 427 he states:

> "It matters not who gave the information or made the complaint, but whether the complaint demonstrates on the objective facts whether the applicant has contravened the Exchange Control Regulation's.

Submissions by Mr Maritz

[61] Mr Maritz submitted that the blocking order was premised on there being a reasonable suspicion that the applicant entered into or was a party to foreign exchange transactions in contravention of the Exchange Control Regulations and/or obtained enrichment from such transactions. The decision to issue the blocking order was taken by Malherbe, the sixth respondent.

[62] He submitted that the blocking order is only issued in terms of Regulation 22A and 22C attaching and /or blocking money and/or goods of the person(s) who is/are on reasonable grounds suspected to have committed the contravention or failure or act or omission, or have benefited, or have been enriched as a result of a contravention or failure or act or omission as contemplated in the Regulations. The applicants have not sought to challenge the validity of the Regulations.

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

> “(aa) that the person who made such decision or took such action did not act in accordance with the relevant provisions of the regulations;
>
> (bb) that such person did not have reasonable grounds to make such decision or to take such action; or
>
> (cc) that that such grounds for the making of such decision or by the taking of such action no longer exist,”

[64] Accordingly, it was contended that Kastelo’s persistence in proceeding with a review application with all its complaints premised purely on PAJA in isolation are misconceived. What is expected of this Court is that it would have to only consider PAJA to the exclusion of section 3(5) thereof and not have any regard to the Regulations and the established jurisprudence.

[65] The purpose of exchange control regulations was explained by the Constitutional Court in South African Reserve Bank and Another v Shuttleworth and Another as follows:

> “Here we are dealing with exchange control legislation. Its avowed purpose was to curb or regulate the export of capital from the country. The very historic origins of the Act in 1933, were in the midst of the 1929 Great Depression, pointing to a necessity to curb outflows of capital. The Regulations were then

passed in the aftermath of the economic crises following the Sharpeville shootings in 1960. The domestic economy had to be shielded from capital flight. Regulation 10's very heading is "Restriction on export of Capital". The measures were introduced and kept to shore-up the country's balance of payment position. The plain dominant purpose of the measure was to regulate and discourage the export of capital and to protect the domestic economy."

[66] While the applicant relies on PAJA, this must be considered within the confines of the Regulations and the jurisprudence developed in this regard over the years

[67] Section 3(5) of PAJA provides:

"(w)here 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. "

[68] Mr Maritz therefore submitted that this is precisely what has happened in this matter, because the procedure followed is that as set out in the Regulations as cited above i.e. the establishment of a reasonable suspicion that the exchange control Regulations were contravened, read with established jurisprudence. Based on this submission he contended that an application to review an administrative decision in terms of Regulation 22D is governed by the Currency and Exchange Control Act, read with the regulations, and PAJA.

[69] It was contended that Kastelo was confined to bring a review application in terms of section 22D on the grounds provided in section 9(2)(d)(1) of the Currency and Exchanges Act.

[70] Mr. Maritz, submitted further that the statutory threshold for issuing a blocking order in terms of 22A and 22C is not proof, but a reasonable suspicion, which is a relatively low, objective threshold assessed on the totality of the available information.

[71] A blocking order is temporary and preservatory in nature and does not require prior notice or audi, as this would defeat its purpose. He referred me to the case of *Ambruster v SARB*[10] where it was held the that the applicants in a review application of a blocking order are not entitled to be heard prior to the blocking order being issued. The *audi* principle only applies before a forfeiture order is made.

[72] The applicants own authorised dealer, Access Bank, triggered the investigation, when it reported suspicious transactions and conducted its own forensic review.

[73] Access Bank raised serious concerns regarding Kastelo's business model and was considering off-boarding Kastelo. The reason it did not off-board Kastelo was that it did not want to pass what it considered contraventions of the regulations to another Bank. It therefore informed FinSurv as it was obliged to in the event of it becoming aware of any activity relating to Kastelo, which, in its view was contrary to the Regulations.

[74] The SARB's reasonable suspicion centred on Kastelo's systemic circumvention of individual SDA and FIA allowances which were contrary to the Exchange Control Regulations and the Authorised Dealer Manual.

[75] Kastelo allegedly used third parties SDA's and FIA's to externalise funds for Kastelo's own benefit, which is expressly impermissible

[76] Individuals were incentivised with bonuses to allow the use of their allowances, and they did not understand the implications. Individuals were unaware that foreign bank accounts were opened in their names.

[77] The model resulted in massive outflows of foreign currency without repatriation of foreign currency. This caused a depletion in the Country's foreign reserves. By November 2025, at least R4 billion in foreign currency was transferred offshore in the current calendar year.

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[10] [2007] ZACC 17; 2007 (6) SA 550 (CC); 2007 (12) BCLR 1283 (CC).

[78] The SARB suspected that Kastelo loaned its own funds to individuals to enable them to utilize their SDA'S and FIA's, which constitutes a simulated transaction designed to circumvent exchange controls.

[79] This was corroborated by Access Bank's finding's that:

a. Many clients earned approximately R15000 per month, yet received loans of approximately R249 000

b. The loans appeared unsecured loans and affordability assessments questionable;

c. Clients were potentially over-indebted.

[80] This conduct is impermissible under the Exchange Control Regulations and the SARB's published policy.

[81] Kastelo is a Treasury Outsourcing Company (TOC). There was a reasonable suspicion of multiple contraventions of the Authorised Dealer Manual, including:

a. Kastello bought and sold foreign currency for its own account, or indirectly controlled foreign currency flows;

b. Kastelo acted as a principal rather than an intermediary;

c. Kastelo conducted transactions without the knowledge of their clients or their participation;

d. They failed to ensure that transactions were concluded and settled directly between authorised dealers and clients;

e. Kastelo misrepresented its activities in compliance declarations submitted to FinSurve;

f. These suspicions are consistent with Kastelo's own 2025 compliance letter to FinSurv.

[82] The applicants own authorised dealer, Access Bank, triggered the investigation, when it reported suspicious transactions and conducted its own forensic review.

[83] Mr Malherbe expressly states that he did not accept complaints merely at face value. He made the decision to issue the blocking order based on a cumulative, holistic assessment of all the available information and not merely isolated facts.

[84] The identities of whistleblowers were not disclosed, and the SARB relies on section 33 of the South African Reserve Bank Act [11]which imposes a duty of secrecy on SARB officials in respect of information acquired in the course of their duties. The non- disclosure is justified on the basis that revealing identities of whistleblowers would be manifestly unfair to the individuals concerned, expose them to personal, professional or other risks, and have a chilling effect on future whistleblowers.

Evaluation and Oral submissions:

[85] During oral submissions, Mr McNally submitted that the Court is not confined, in review applications of this nature, to section 9(2)(d)(i) of the Exchange Control Regulations. In support of this submission, I was referred to Section 3 of the Constitution, PAJA and *Zondi v MEC for Traditional and Local Government Affairs*[12] It was contended that if the blocking order is administrative action, the Court can set it aside. The SARB have conceded that it is administrative action in para 3.1 of their supplementary heads of argument.

[86] It was contended that it cannot be argued as was argued by Mr Maritz, that an ordinary statute, the Currency and Exchanges Act, takes precedence over PAJA, and through PAJA, over section 33 of the Constitution. This is supported by the fact that the Currency and Exchanges Act pre-dates the Constitution by 63 years and section 9(2)(d)(i) was inserted in 1987 and not with Section 33 in view. It was further contended that the Courts have confirmed that the exercise by the SARB of its powers to block funds in terms of Regulation 22A and 22C is reviewable under PAJA. I was referred to *Ibex investment Holdings Ltd and Others v South African Reserve Bank and Others*.[13] In my view, this case finds no application for the proposition contended as it was withdrawn and settled

[11] 90 0f 1989,
[12] [2004] ZACC 19; 2005 (3) SA 589 (CC); 2005 (4) BCLR 347 (CC).
[13] 2024/085397) [2025] ZAGPPHC 351 (23 April 2025), para [81].

and does not establish authoritative case law. I was also referred to *Odendaal v South African Reserve Bank*[14] for the same contention proposed for the *Ibex* case. In *Odendaal* the applicant approached the court to release funds held in terms of a blocking order issued by the SARB, for living expenses. The court was not in a position to order the release of funds which where the subject of a blocking order. The court made an obiter dictum that the applicant should consider bringing a review application under PAJA. Similarly, the obiter dictum of Wille J in *Odendaal* is not legally binding authority for any legal argument.

[87] Mr Maritz on the other hand contended that when the Constitution and PAJA were enacted the legislature was well aware of Section 9(2)(d)(i) of the Currency and Exchanges Act.

[88] Mr Maritz submitted that the right to apply to court for the review of a decision which has the effect of blocking any money is afforded in terms of section 9(2)(d)(i) of the Currency and Exchanges Act which is special legislation. The PAJA is general legislation. He submitted that it is trite that the provisions of special legislation dealing with specific matters take precedence over general provisions in general legislation. The review grounds in section 6 of PAJA are not available to a person aggrieved by the issue of a blocking order. The Court has no power to set aside a blocking order on any grounds other than the 3 grounds listed in Section 9(2)(d)(i) of the Currency and Exchanges Act. The applicant is not entitled to rely on any of the grounds listed in section 6 of PAJA and the court's power to review and set aside a decision may only be exercised if the Court is satisfied on one or more of the three grounds prescribed in the Currency and Exchanges Act. In support of this contention, he referred to *State Information Technology Agency Soc Ltd v Gijima Holdings (Pty) Ltd*[15] and submitted that the Constitutional Court confirmed that administrative action does fall under PAJA, but not all administrative action falls under Section 6 of PAJA.

[89] The grounds set out in Section 9(2)(d)(i) are set out in paragraph 38 above. In this regard, Mr Maritz submitted that it was not contended by Kastelo that the

[14] [2023] ZAWCHC 160 (6 July 2023), para [33].
[15] [2017] ZACC 40; 2018 (2) BCLR 240 (CC); 2018 (2) SA 23 (CC).

grounds for the issue of the blocking order no longer exist. Accordingly, for the Court to set aside the blocking order, the Court would have to be satisfied:

a. that Malherbe did not act in accordance with the relevant provisions of Regulation 22A and Regulation 22C and no case has been made out by Kastelo that Malhebe did not;

b. that Malherbe did not have reasonable grounds to issue the blocking order.

[90] According to Mr Maritz this is the only ground requiring determination by the Court. This includes whether he had reasonable grounds to suspect that Kastelo had contravened one or more Regulations. The jurisdictional requirement to entitle Malherbe to issue the blocking order is that he had reasonable grounds to suspect that Kastelo contravened one or more of the Exchange Control Regulations.

[91] I have considered all the authorities referred to as well as all the submissions of counsel in this regard. I agree with Mr Maritz that PAJA empowers an administrator to use a fair procedure that is different from the mandatory requirements of section 3(2) of PAJA, provided that the procedure is authorised by a specific empowering law and is still fair. The empowering provisions in the Regulations provide a specific statutory review framework which was established by Regulation 22D read with section 9(2)(d)(i) of the Currency and Exchange Control Act. In my view, while the issuing of the blocking order under section 22A and section 22C constitutes administrative action under PAJA, it has been consistently held that an aggrieved party must seek their remedy directly through the application of Regulation 22D and Section 9(2)(d)(i) rather than solely relying on PAJA. Regard should accordingly be had to section 3(5) of PAJA and the plain meaning thereof.

[92] Mr McNally contended that the reasons given for the blocking order were not adequate and that the SARB's contention that it was not required to provide reasons in terms of the Currency and Exchange Control Regulations is incorrect. The main basis for this contention was that the SARB accepted that the issue of the blocking order was administrative action under PAJA and that it did in fact provide reasons. The SARB's reasons were not adequate, intelligible

or informative and did not disclose a factual basis for the alleged reasonable grounds to suspect a contravention.

[93] Mr Maritz submitted that the SARB was not required to furnish reasons in terms of the Exchange Control Regulations, but reasons were given orally as well as in writing before the review application was issued. Kastelo did not exercise its rights in terms of section 5 (1) of PAJA which provides that any person whose rights have been materially affected by administrative action and who has not been provided with reasons may within 90 days, request the administrator concerned to furnish written reasons for the action. Although not obliged to, the SARB furnished reasons in its letter dated 15 December 2025. Paragrah 7 of the letter summarises the 'available information', which gave rise to a 'reasonable suspicion'. The relevant regulations suspected of being contravened were stipulated and identified in the letter. In the Notice of Motion issued on 17 December 2025 in terms of Rule 53, the SARB was given notice to dispatch the record of the proceedings "together with such reasons as it is required by law to give or desire to make". The argument is that even though the letter contained the reasonable grounds to suspect and reasons which SARB were not obliged to furnish, but nevertheless did, the SARB were invited to furnish such reasons for the decision as the respondents were 'required or desired' to give.

[94] Mr McNally submitted that the SARB was not entitled to supplement the reasons furnished in the letter on 15 December 2025 by providing further reasons in its answering affidavit. He also argued that the SARB's reliance on *South African Reserve Bank v Magnus Heystek North Gauteng High Court, Pretoria*,[16] was unsustainable. He contended that *Heystak* is distinguishable, since reasons had not been furnished prior to the institution of the Rule 53 review proceedings and in that context the court accepted that the SARB had furnished its reasons as part of the Rule 53 record and set them out in its answering affidavit. It was submitted that in casu, the SARB accepts that it furnished written reasons in the letter dated 15 December 2025 and it was not providing reasons for the first time in its answering affidavit. The SARB is

[16] (A248/2010, 21961/08) [2012] ZAGPPHC 301 (7 November 2012).

therefore bound by the reasons in this letter and was not entitled to supplement, improve or reconstruct the reasons in its answering affidavit. In *National Lotteries Board v South African Education an Environment Project*,[17] the SCA found that there is a duty on decision -makers to furnish reasons either when making a decision or upon request thereafter, and prior to any litigation. When reasons are not given prior to litigation, that may be a ground of review in its own right. Where reasons are furnished, they are bound thereby. In *Zuma v Democratic Alliance and Others; Acting National Director of Public Prosecutions and Another v Democratic Alliance and Another*[18] it was held that the reasons stated by Mr Mpshe, the former Acting Director of Public prosecutions prior to the commencement of litigation were binding and additional new reasons stated in answering papers (as sought to be done by the SARB in casu) were irrelevant. The Court Held:

> "On 6 April 2009 Mr Mpshe announced publicly that he had made the decision to discontinue the prosecution of Mr Zuma and issued a detailed media statement providing the reasons for the decision. It is against those reasons, and those reasons alone, that the legality of Mr Mpshe's decision to terminate the prosecution is to be determined."

[95] Mr Maritz argued that the answering affidavit of Malherbe gives both the grounds on which his decision was based and the reasons for his decision to issue the blocking order. This is set out fully in the answering papers at paragraphs 103 to 174. He contended that even though the answering papers contain far more detail than the letter of 15 December 2025, both the grounds upon the which the reasonable suspicion was based and the reasons for the decision to issue the blocking order remain the same. The contention that the SARB was not entitled to amplify or expand upon the grounds for the suspicion and the reasons therefor as contained in the letter of 15 December is without merit. He relied on the *Heystek* decision in making this submission.

[96] I agree with the contention of Mr McNally that an organ of state must stand and fall by the reasons it provides at the time the decision was originally made.

[17] [2011] ZASCA 154; 2012 (4) SA 504 (SCA), para [27].
[18] [2017] ZASCA 146; 2018 (1) SACR 123 (SCA).

However, the SARB is legally permitted to issue blocking orders before providing any reasons to ensure that illicit funds are not swept away. There is no provision in the Regulations obliging the furnishing of reasons. In casu, the SARB nonetheless provided reasons. In my view, the question is whether the SARB is entitled to expand on the very same reasons provided in the letter dated 15 December 2025 in the answering affidavit of Malherbe

[97] I have considered the reasons provided in the letter dated 15 December 2025 and the relevant paragraphs in the answering affidavit as well as the submissions of both counsels. Apparent from the evidence, the grounds upon which the reasonable suspicion was based and the reasons for the decision to issue the blocking order in the letter dated 15 December 2025 and the relevant paragraphs in the answering affidavit of Malherbe were indeed the same. Accordingly, it was legally permissible to provide further factual substantiation, evidentiary support or explanations for the grounds and reasons advanced initially in the letter dated 15 December 2025. Without detailed answering affidavits it would not be possible to prove the reasonable grounds to suspect a contravention by the SARB. It would also not be possible to contest the reasonable grounds by the applicant or for the reasonable grounds to be evaluated by the court in deciding whether or not to uphold the application. There would be no evidentiary "flesh" of the original suspicion. Since, in most instances, an affected party only receives reasons after the blocking order is issued, the SARB is required to record the accurate basis for their reasonable grounds of suspicion.

Audi not required

[98] The SARB submitted that it is common cause that the amount of R4 billion suspected of being involved in the contraventions left the country and is therefore not available for attachment for blocking (save insofar as the blocked amount of R13 million involved in the contravention), which is either tainted or clean money. In the case of *Ferriera and Others v Die Staatspresident and Others*,[19] the court considered an attachment of assets and a forfeiture order made by SARB. The setting aside of the forfeiture order was conceded by the

[19] [2004] ZASCA 29; 2004 (2) SACR 454 (SCA).

respondents. The only issue the court had to consider was the validity of the attachment orders. The court confirmed that it was necessary for the SARB to comply with the audi et alteram partem principle in respect of a forfeiture order, but it was not necessary for the SARB to comply with the audi principle in respect of an attachment order: In this regard the court stated:

> " Ek wil dit van my kant duidelik stel dat ek nie vind dat dit nodig was om die stel reel audi et alteram partem na te volg ten aansien van die beslagleggingsbevele nie."

[99] The principle that *audi* is not required in respect of the blocking order but only at the stage of forfeiture was confirmed in *Ambruster* which also held that undue hardship is considered at the stage of forfeiture and not when a blocking order is issued.

[100] Mr McNally argued that the effect of the blocking order halts an indispensable aspect of Kastelo's business because it locks clients' funds and cripples Kastelo's ability to conduct its business and meet its client obligations. As a result, the blocking order has had a devastating effect on Kastelo's reputation, and it has the potential to put Kastelo out of business. Mr Maritz argued that it is irrelevant at this stage. Seizure and forfeiture are different with different requirements.

[101] The primary complaint of Kastelo is that it was not notified of the intended blocking order and was not afforded an opportunity to be heard. Therefore, it's audi rights were infringed. The blocking order is temporary and preservatory in nature. Established jurisprudence does not require the SARB to give notice nor provide a party with audi alteram partem. The provision of prior notice would defeat the purpose of the preservatory nature of the blocking order. Kastelo's business model clearly depleted the Republic's foreign currency and the blocking order sought to prevent further depletion. Kastelo's views could have been elicited by Malherbe, however, Malherbe was not obliged to hear them. Malherbe did not regard engaging with Kastelo as a necessary precursor to the issuing of the blocking order. I find that this did not make the blocking order irrational, nor can it be said to be a finding that no reasonable decision maker

could have reached. Kastelo is only entitled to audi prior to and in the event of any forfeiture order intended to be made, which is after the investigation and final finding that Kastleo contravened the exchange control regulations.

[102] Accordingly, Malherbe was not obliged to afford Kastelo audi alteram partem prior to issuing the blocking order and neither was Kastelo entitled to it.

[103] Mr McNally disputed that the assertion by Mr Maritz that it is common cause that the suspected contravention amount was in the realm of R4 billion at the time of the blocking order (which left the country) and argued that there was no basis for this assertion on the facts. Malherbe (at para 156 and 157 of the answering affidavit) referred to the Cross Border Foreign Exchange ("CFE") results involving Kastelo from 16 November 2021 to 21 November 2025 during which a substantial number of transactions took place which formed part of the record of decision as "SARB 12" and "SARB 18". The CFE disclosed a reasonable suspicion of exchange control contraventions in the amount of at least R4 billion. There is no countervailing evidence in respect of the CFE results. Malherbe submitted that if it is found that Kastello contravened Exchange Control Regulations, this amount may be forfeited to the State, but this will only be determined in the boarder investigation. Accordingly, the submission of Kastelo in this regard is without merit and is rejected.

The Authorised Dealer

[104] Mr McNally disputed the contention by the SARB that Kastelo cannot rely on Access Bank's role as an Authorised Dealer, because an Authorised Dealer is not entitled to grant every permission required under Regulation 3(1). He argued further that Authorised Dealers are appointed by the SARB and authorised to approve foreign exchange transactions within the conditions and limits prescribed by the SARB and the applicable Exchange Control framework. He relied on *Pratt v First Rand Bank Ltd*[20] and *South African Reserve Bank and Another v Shuttleworth and Another.*[21]The paragraph I was referred to in Shuttleworth is not what the Constitutional Court held but forms part of the

[20] [2014] ZASCA 110; 2009 (2) SA 119 (SCA).
[21] Ibid fn 8.

factual background in the matter. My considered view is that this judgment does not find application for the proposition that an Authorised Dealer is authorised to approve all or unlimited transactions. The judgment concerns the interpretation of the constitutional procedures for the imposition of ‘national taxes, levies, duties or surcharges’, in particular, the so called ‘capital export levy’ imposed on and complained of by Mr Shuttleworth. The *Pratt* case is not authority for the proposition that an Authorised Dealer is authorised by the SARB to process and approve all or unlimited transactions. The submission in this regard is perplexing since it is admitted that Authorised Dealers are appointed by SARB and authorised to approve foreign exchange transactions <u>within the conditions and limits prescribed</u> by SARB and the applicable Exchange Control framework. (my emphasis)

[105] Mr Maritz relied on *Sylla and 2 Others v Minister of Finance and Another*,[22] where the court at para [49] held that Standard Bank was ‘not a person authorised by the Treasury’ as contemplated in Regulation 3(1) and that it was incapable of giving permission to Kilimanjaro to export foreign currency.

[106] At para [35] it was held:

> “It is expedient to, at the outset, deal with the applicant’s contention that ‘a person authorised by the Treasury’ as referred to in Exchange Control Regulation 3(1) means an ‘authorised dealer’, and that therefore those banks who have been appointed as authorised dealers are persons authorised by the Treasury to grant permission as contemplated in Regulation 3(1). A finding against the applicants in regard to this contention would be dispositive of their contention that Standard Bank had validly granted permission to Kilimanjaro to export foreign currency.”

[107] The contention that the totality of case of the SARB is that the transactions were allegedly simulated in that client allowances were used for the benefit of Kastelo under the guise of client’s permissions,’ is, in my view misconceived. The case of the SARB is based on more than solely this contention and the decision of Malherbe to issue the blocking order was based on several different

[22] (08/38696) [2011] ZAGPJHC 200 (13 December 2011).

considerations. This is further borne out by Malherbe when he stated the following in his answering affidavit at para 22:

> "I reiterate what I stated above concerning the Reserve Bank's mandate which is not purely limited to foreign currency being taken out of South Africa. The repatriation at the close of each cycle does not remedy the fact that the applicant did not have the required permission to export foreign currency by making use of this model as contemplated in Regulations 3 and 10(1)(c). Foreign currency does not come back into South Africa on the cycle described." (See para 281 and 282).

[108] The letter dated 15 December 2025 at paragragh 7.5 the reasonable grounds suspected to have been contravened were identified as being;

> "Regulations 3(1)(a) and/or 3(1)(b) and/or 3(1)(c) and /or 10(1)(c) in that the export of the foreign currency is, in fact, an export by your client who has no permission to do so…"

[109] Kastelo's argument in this regard is accordingly without merit and rejected.

Authority of Malherbe to issue the blocking order.

[110] Kastelo disputed the authority of Malherbe to issue the blocking order. Malherbe confirmed under oath that he was the designated functionary who issued the blocking order. It should be noted that this was not disputed in reply. He explained and confirmed that the Minister of Finance has delegated the powers and functions conferred on the Treasury and assigned duties imposed on the Treasury, to the Governor, Deputy Governor of the SARB, the Head of FinSurve and/or a Divisional Head of FinSurve and/or any official of the SARB who, in terms of the internal rules or authorisations or both, of FinSurv is an authorised signatory of FinSurv- Regulation 22E of the Exchange Control Regulations. A delegated functionary of FinSurv is empowered to issue a blocking order if on reasonable grounds he suspects a contravention of the Exchange Control Regulations in terms of Regulations 22A and/or 22C, in respect of bank accounts in which money is held. Prior to issuing the blocking order he satisfied himself, on a holistic consideration of all the evidence before him, that there were reasonable grounds to suspect that

Kastelo contravened the Exchange Control Regulations. In the circumstances, I am satisfied that Malherbe was the authorised delegated functionary empowered to issue the blocking order in this instance.

The SARB is not required to prove the contravention/s

[111] The blocking order was issued in terms of Regulation 22A and Regulatio22C. A necessary jurisdictional fact which must exist before the powers conferred in these regulations may be invoked is that reasonable grounds to suspect that Kastelo contravened the regulations as contemplated in Regulation 22C (1), and from which the SARB would be entitled to recoup amounts involved in the alleged foreign exchange contraventions. In terms of the regulations, it is not required that Malherbe had to prove that the contraventions had been committed and that Kastelo was the entity contemplated in Regulation 22C (1). The only requirement was a suspicion based on reasonable grounds. The question whether reasonable grounds for the suspicion are present or not must be objectively assessed. See *South African Reserve Bank v Leathern NO and Others,*[23] *Minister of Law and Order & Others v Hurley and Another*,[24] referred to with approval by McCreath J in Francis George Family Trust at 711G-H. See also the dictum by *Lord Devon in Shaaban Bin Hussein & Others v Chong Fook Kam and Another*[25] where he said the following:

> "Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; "I suspect, but I cannot prove". Suspicion arises st or near the starting point of an investigation of which the obtaining of prima facie proof is at the end." Having considered whether there are genuine disputes of fact for the matter to be referred to trial, I find that no real, genuine disputes of fact exist for such an order to be granted.

[112] Malherbe gave a detailed explanation supported by the bank account of Kastelo. In just 3 months, 4 August 2025 to 21 November 2025, the suspected contravention amount was R4 billion. The blocking order was issued in respect of an amount of R13 million standing to the credit of Kastelo's account. The suspicion is overwhelming.

[23] [2021] ZASCA 102; 2021 (5) SA 543 (SCA).
[24] [1986] ZASCA 53; 1986 (3) SA 568 (A).
[25] [1969] 3 All ER 1626 (PC) at 1630.

[113] In my view, Maherbe, had reasonable grounds to suspect that Kastelo had contravened the Regulations. He issued the blocking order on 24 November 2025, after he had due consideration to the information which he obtained from different sources: Access Bank (Kastelo's, own bank), clients of Kastelo, whistleblowers and Mr Malherbe's own investigation including considering relevant transactions made by Kastelo between 4 August 2025 to 21 November 2025. He expressly stated that he did not accept complaints merely at face value. He made the decision to issue the blocking order based on a cumulative, holistic assessment of the totality of the available information and not isolated facts. The complaints of individual clients and whistleblowers and Access Bank are not the sole considerations that were taken into account. He specifically stated that an investigation is not always initiated by complaints. Of paramount importance is how FinSurve objectively assesses the information before reaching its decision. Malherbe specifically stated that he made the decision based on the objective facts, not on the 'mere say so' of a complaint/s. He also confirmed that the decision was informed by a holistic evaluation of the information as a whole, which viewed objectively, justified the finding that reasonable grounds existed to suspect that the transactions in question were concluded in contravention of the provisions of the Exchange Control Regulations. The fact that the whistleblowers may be competitors- which was not admitted by Malherbe-in the market is neither here nor there. The relevant question is not who brought the allegations to the fore, but whether reasonable grounds existed to suspect that the Exchange Control Regulations were contravened. Access Bank conducted their own independent forensic investigation and based on the findings thereof, were obliged to report suspicious foreign exchange transactions. Access Bank itself were considering off-boarding Kastelo because of the risks involved for them.

[109] In the circumstances, I find that the available evidence was holistically and objectively viewed by Malherbe before reaching a decision that there were reasonable grounds to suspect that Kastelo had contravened the Regulations and I accept his version.

Order

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

1. The application is dismissed.
2. The applicant is ordered to pay the costs on an attorney-and- client scale, including the costs of two counsel.

S JOHNSON
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

For the Appellants	: JPV McNally SC
Instructed	: Webber Wentzel
For the Respondent	: NGD Maritz SC and Ms T Govender
Instructed	: Werkmans Attorneys
Date of hearing	: 9 June 2026
Date of Judgement	: 28 July 2026