

Unblocking a blocking order

By [Graeme Palmer](#)

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The South African Reserve Bank (SARB) may, in terms of Exchange Control Regulations, cause money or goods to be attached, where on reasonable grounds they suspect there has been a contravention of the Regulations. In the recent judgment, *Berdine Odendaal v The South African Reserve Bank*, the High Court considered an application for the release of blocked funds.



Image source: Bruce Rolff – [123RF.com](#)

Mayfair Speculators, a company that benefited from the ‘Steinhoff’ accounting irregularities and controlled by Marcus Jooste, paid about R60m to Odendaal. SARB thus suspected that Odendaal had benefited from a breach of the Regulations and issued a blocking order. Following this, Odendaal requested access to the money in the blocked accounts to cover living expenses and legal costs.

SARB was prepared to release an amount of R150,000 per month to Odendaal’s newly opened bank account to cover all reasonable expenses. The dispute that arose was whether the agreement to release R150,000 each month included legal expenses. SARB said it did, while Odendaal disagreed.

The disagreement culminated in Odendaal launching a court application for specific performance directing SARB to pay legal expenses from her blocked account in addition to the R150,000. SARB contended that the court application constituted a repudiation of the agreement, which they accepted, and therefore cancelled the agreement.

The Court had to decide whether SARB had validly cancelled the agreement. Repudiation occurs where a person intimates, either by words or conduct (and without lawful excuse), that all or some of their obligations in the agreement will not be performed. It was pointed out by the Court that a *bona fide* insistence on the performance of an incorrect interpretation of a material term of a contract can amount to a repudiation.

The court held that on proper interpretation of the correspondence between the parties, the agreement was to release R150,000 per month to cover all of Odendaal's reasonable expenses, including her legal costs. By launching the Court application, Odendaal insisted on terms inconsistent with the correct interpretation of the agreement and thus unequivocally indicating that she did not consider herself bound by the valid agreement.

The Court concluded that, objectively assessed, Odendaal had repudiated the agreement with SARB even though subjectively she may not have intended to do so.

Decisions by SARB to block funds are administrative action contemplated in the Promotion of Administrative Justice Act (PAJA). Requests to release block funds also fall under PAJA. If a person disagrees with SARB's decision on either blocking or unblocking attached funds, the correct remedy is to review the decision under PAJA.

ABOUT GRAEME PALMER

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