



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**Case No: 9318/2022**

<b>AFRICA COMMUNITY MEDIA (PTY) LTD</b>	<b>First Applicant</b>
<b>ANA STUDIO (PTY) LTD</b>	<b>Second Applicant</b>
<b>ALLIED LOGISTICS SOLUTIONS (PTY) LTD</b>	<b>Third Applicant</b>
<b>BANNER NEWS AGENCY (PTY) LTD</b>	<b>Fourth Applicant</b>
<b>CONDE NAST INDEPENDENT MAGAZINES (PTY) LTD</b>	<b>Fifth Applicant</b>
<b>CONTENT NATION MEDIA (PTY) LTD</b>	<b>Sixth Applicant</b>
<b>INSIGHTS PUBLISHING (PTY) LTD</b>	<b>Seventh Applicant</b>
<b>GLOBAL COMMAND AND CONTROL TECHNOLOGIES (PTY) LTD</b>	<b>Eighth Applicant</b>
<b>INDEPENDENT MEDIA SOLUTIONS (PTY) LTD</b>	<b>Ninth Applicant</b>
<b>INDEPENDENT MEDIA SA (PTY) LTD</b>	<b>Tenth Applicant</b>
<b>INDEPENDENT NEWSPAPERS (PTY) LTD</b>	<b>Eleventh Applicant</b>
<b>KATHEA COMMUNICATIONS SOLUTIONS (PTY) LTD</b>	<b>Twelfth Applicant</b>
<b>AFRICA ONLINE RETAIL (PTY) LTD</b>	<b>Thirteenth Applicant</b>
<b>ORLEANS COSMETICS (PTY) LTD</b>	<b>Fourteenth Applicant</b>
<b>WIKIDEALS (PTY) LTD</b>	<b>Fifteenth Applicant</b>
<b>TRIPOS TRAVEL (PTY) LTD</b>	<b>Sixteenth Applicant</b>
<b>INDEPENDENT ONLINE SA (PTY) LTD</b>	<b>Seventeenth Applicant</b>
<b>AFRICAN NEWS AGENCY (PTY) LTD</b>	<b>Eighteenth Applicant</b>
<b>SAGARMATHA TECHNOLOGIES LTD</b>	<b>Nineteenth Applicant</b>
<b>ANA PUBLISHING (PTY) LTD</b>	<b>Twentieth Applicant</b>
<b>AFRICAN NEWS AGENCY PICTURES (PTY) LTD</b>	<b>Twenty-first Applicant</b>
<b>3 LAWS CAPITAL SOUTH AFRICA (PTY) LTD</b>	<b>Twenty-second Applicant</b>

<b>SGT SOLUTIONS (PTY) LTD</b>	Twenty-third Applicant
<b>AFRICA EQUITY EMPOWERMENT INVESTMENT LTD</b>	Twenty-fourth Applicant
<b>BUSINESS VENTURE INVESTMENTS NO 1581(RF) (PTY) LTD</b>	Twenty-fifth Applicant
<b>THE DR. IQBAL SURVÉ BURSARY TRUST</b>	Twenty-sixth Applicant
<b>THE SOUTH ATLANTIC ARTS AND CULTURE TRUST</b>	Twenty-seventh Applicant
<b>ESP AFRICA (PTY) LTD</b>	Twenty-eighth Applicant
<b>SIZWE AFRICA IT GROUP (PTY) LTD</b>	Twenty-ninth Applicant
<b>KALULA COMMUNICATIONS (PTY) LTD</b>	Thirtieth Applicant
<b>PARTI TRUST</b>	Thirty-first Applicant

and

<b>THE STANDARD BANK OF SA LTD</b>	Respondent
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**AND**

**Case No: EC08/2023**

<b>AFRICA COMMUNITY MEDIA (PTY) LTD</b>	First Applicant
<b>ANA STUDIO (PTY) LTD</b>	Second Applicant
<b>ALLIED LOGISTICS SOLUTIONS (PTY) LTD</b>	Third Applicant
<b>BANNER NEWS AGENCY (PTY) LTD</b>	Fourth Applicant
<b>CONDE NAST INDPENDENT MAGAZINES (PTY) LTD</b>	Fifth Applicant
<b>CONTENT NATION MEDIA (PTY) LTD</b>	Sixth Applicant
<b>INSIGHTS PUBLISHING (PTY) LTD</b>	Seventh Applicant
<b>GLOBAL COMMAND AND CONTROL TECHNOLOGIES (PTY) LTD</b>	Eighth Applicant
<b>INDEPENDENT MEDIA SOLUTIONS (PTY) LTD</b>	Ninth Applicant
<b>INDEPENDENT MEDIA SA (PTY) LTD</b>	Tenth Applicant
<b>INDEPENDENT NEWSPAPERS (PTY) LTD</b>	Eleventh Applicant
<b>KATHEA COMMUNICATIONS SOLUTIONS (PTY) LTD</b>	Twelfth Applicant

<b>AFRICA ONLINE RETAIL (PTY) LTD</b>	Thirteenth Applicant
<b>ORLEANS COSMETICS (PTY) LTD</b>	Fourteenth Applicant
<b>TRIPOS TRAVEL (PTY) LTD</b>	Fifteenth Applicant
<b>INDEPENDENT ONLINE SA (PTY) LTD</b>	Sixteenth Applicant
<b>AFRICAN NEWS AGENCY (PTY) LTD</b>	Seventeenth Applicant
<b>SAGARMATHA TECHNOLOGIES LTD</b>	Eighteenth Applicant
<b>ANA PUBLISHING (PTY) LTD</b>	Nineteenth Applicant
<b>AFRICAN NEWS AGENCY PICTURES (PTY) LTD</b>	Twentieth Applicant
<b>3 LAWS CAPITAL SOUTH AFRICA (PTY) LTD</b>	Twenty-first Applicant
<b>SGT SOLUTIONS (PTY) LTD</b>	Twenty-second Applicant
<b>AFRICAN EQUITY EMPOWERMENT INVESTMENT LTD</b>	Twenty-third Applicant
<b>BUSINESS VENTURE INVESTMENTS NO 1581 (RF) (PTY) LTD</b>	Twenty-fourth Applicant
<b>THE DR. SURVE BURSARY TRUST</b>	Twenty-fifth Applicant
<b>THE SOUTH AFRICAN ATLANTIC ARTS AND CULTURAL TRUST</b>	Twenty-sixth Applicant
<b>ESP AFRIKA (PTY) LTD</b>	Twenty-seventh Applicant
<b>SIZWE AFRICA IT GROUP (PTY) LTD</b>	Twenty-eighth Applicant
<b>PARTI TRUST</b>	Twenty-ninth Applicant
<b>KALULA COMMUNICATIONS (PTY) LTD</b>	Thirtieth Applicant
<b>WIKIDEALS (PTY) LTD</b>	Thirty-first Applicant

and

<b>THE STANDARD BANK OF SA LTD</b>	First Respondent
<b>LUNGISA FUZILE N.O.</b>	Second Respondent

**Coram:** Justice J Cloete

**Heard:** 12 September 2023

**Delivered electronically:** 14 September 2023

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## JUDGMENT

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**CLOETE J:**

**Introduction and factual background**

[1] There are two urgent applications before me at this stage of what appears to be a titanic battle between what I will refer to, for convenience, as the Sekunjalo Group and related entities (“SG”) and, amongst others, Standard Bank. The main issue I must determine in both is whether Standard Bank should be interdicted from closing SG’s accounts with it this coming Friday 15 September 2023 until finalisation of proceedings currently pending in the High Court and Equality Court. On an ancillary issue, there is no objection to the relief sought by SG for the 28<sup>th</sup> to 31<sup>st</sup> applicants being joined.

[2] The material facts are as follows. On 25 April 2022, SG received a notice from Standard Bank of its intention to terminate SG’s banking relationship with it. For present purposes what is relevant are the following paragraphs in that notice:

‘8. *In order to assess the extent of the risks that a continued relationship with the Sekunjalo Group may pose, Standard Bank has given careful consideration to the responses of the Sekunjalo Group, including the report provided on 7 March 2022, and all potentially relevant information to which Standard Bank has had access to date.*

9. *The responses provided have, however, not been sufficient for the purpose of allaying Standard Bank’s concerns. Given this, and on the*

*strength of the risk assessment that was conducted, Standard Bank has decided to discontinue its banking relationship with the Sekunjalo Group and will no longer grant new or further facilities or products.*

10. *Standard Bank will directly communicate its decision to terminate its relationship with each Sekunjalo Group entity. Each termination, and the consequences of each termination, will be in accordance with the contractual arrangements and terms and conditions governing the relationship between Standard Bank and each Sekunjalo Group entity. Standard Bank will consider the complexities of each business and product in the assessment of the appropriate notice period so as to allow each Sekunjalo Group entity an opportunity to arrange its affairs.*
11. *Notwithstanding what is set out above, Standard Bank acknowledges and continues to respect the legal process currently pending at the Competition Tribunal under case number IR153/21 and affirms its commitment to have due regard to any order that is granted in respect of the application....' (my emphasis)*

[3] On 2 June 2022, SG launched an application in the High Court in this Division under case number 9318/2022 to interdict Standard Bank from discontinuing its banking services pending the final determination of an application to be launched within 15 days *'for the final relief the applicants deem appropriate concerning the validity or otherwise of the termination notice dated 25 April 2022 issued by the respondent'*. The interim application was opposed and full sets of papers filed, with SG's replying affidavit being delivered on 12 August 2022. It is that application which is now pursued along with a separate urgent application, recently launched, in terms of s 21(5) of the Equality Act.<sup>1</sup>

[4] On 4 August 2022, SG instituted the main application in the High Court under case number 13034/2022. In that litigation there are 80 applicants and

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<sup>1</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

23 respondents, including Standard Bank and six other major South African banks, the South African Reserve Bank, the Financial Sector Conduct Authority, the Minister of Finance and the Minister of Justice and Correctional Services. From a perusal of the presently amended notice of motion there are 5 main orders sought for declaratory relief as well as review relief to set aside *'the refusal, withdrawal, termination and closure by the banks [cited] of the financial products or services and bank relationships with the applicants'*. The issues to be considered in the main High Court application (which is opposed) are complex, in certain respects novel, and have at their heart constitutional issues including complaints of unfair or unequal treatment, anti-competitiveness and discrimination.

[5] In about August/September 2022, SG along with other complainants (presently totalling 84 in all) instituted separate proceedings in the Equality Court under case number EC01/2022 against 27 respondents (including Standard Bank, the other major South African banks and the further respondents mentioned above in the High Court application). The presently amended notice of complaint, albeit based squarely on provisions of the Equality Act, seeks relief of similar nature. For contextual purposes it is convenient to quote the following paragraphs from the founding affidavit deposed to by Dr Iqbal Survé in the Equality Court urgent application before me in relation to those proceedings:

*'14. At the heart of the challenge is the fact that unilateral termination of bank accounts has far reaching implications for those involved. It prevents them from trading freely as guaranteed by section 22 of the*

*Constitution. Without banking facilities no person can meaningfully take part in the economy of the country. Such action as serious as terminating banking facilities cannot be implemented on flimsy and irrational grounds. It has dire consequences for thousands of employees and companies who have separate legal personality and [are] governed by independent boards in which I do not participate at all. I state at the outset that the termination of accounts constitutes collective punishment of all companies and employees of several companies. Furthermore, the termination constitutes cruel punishment for innocent employees who have nothing to do with the motive for which Standard Bank wishes to punish me and Independent Media.*

15. *There is a growing concern that banks, like Standard Bank, are indeed weaponizing their control of banking facilities. In modern society a bank account is an essential tool for a meaningful participation in the economy and trade as guaranteed in section 22 of the Constitution. Terminating one's bank account, without any reason is indeed tantamount to capital punishment in the context of economic participation.*
16. *In both the Equality Court and the High Court review, the applicants contend that banks are performing a public function and terminating bank accounts has far-reaching implications for those affected. In this particular instance, the termination is irrational and constitutes unfair discrimination against black owned companies employing thousands of black employees whose lives will be affected by the envisaged termination.*
17. *The applicants, including other applicants who are not part of this application but are entities related to the Sekunjalo Group, are challenging the banks for being selective as to which entities, in their view, pose reputational risk...'*

[6] On 16 September 2022 the Competition Tribunal granted some of the SG entities interim relief directing inter alia Standard Bank to suspend the closure of their accounts for a period of 6 months 'or until such time as the

*Competition Commission has concluded its investigation'*. Standard Bank (and other banks) lodged an appeal/review of the Tribunal's order to the Competition Appeal Court ("CAC"). Accepting that its appeal/review to the CAC did not suspend the Tribunal's order, Standard Bank did not seek any such suspension. Instead it undertook in a letter from its attorney dated 14 November 2022 to: (a) comply therewith while it remained effective and pending *'the outcome of the appeal/review'*; and (b) afford the affected entities a 30-day notice period prior to closing the accounts *'in the event that the appeal/review is upheld, or the Tribunal's order lapses due to the effluxion of time'*. This resulted in the High Court interdict application being stayed in the interim. Importantly, the undertaking was voluntarily extended by Standard Bank to entities in SG that were not specifically cited in the Tribunal's order, but which had also received termination notices from Standard Bank. For practical purposes I will thus extend the reference to "SG" in this judgment to all of the entities included in that undertaking.

- [7] Significantly however, Standard Bank appeared to have forgotten that in its own termination notice of 25 April 2022 it undertook to *'consider the complexities of each business and product in the assessment of the appropriate notice period so as to allow each Sekunjalo Group entity an opportunity to arrange its affairs'*. Either it had forgotten, or it had taken a decision to ignore these terms of its notice and instead to simply treat all affected SG entities, irrespective, as only requiring 30 days notice. As far as I can ascertain this material change in Standard Bank's stance has not been explained on the papers before me.



- [8] On 9 February 2023, the Tribunal extended the duration of its order to 16 September 2023, which is this coming Saturday. On 17 July 2023 the CAC handed down judgment in which the majority of the court held the Tribunal's order to be wrong. On 21 July 2023 Standard Bank, through its attorneys, gave notice to SG's attorneys that its accounts would be closed on 21 August 2023.
- [9] Attached to that letter marked "B" was a list of 31 separate accounts which it would be closing. These accounts are those of all but the 13<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup> and 28<sup>th</sup> applicants in the High Court interdict application and the 13<sup>th</sup>, 20<sup>th</sup>, 22<sup>nd</sup> and 27<sup>th</sup> applicants in the Equality Court interdict application (although they are cited in a slightly different order they are the same applicants in both); but another entity whose accounts would also be closed was referred to as "Sekunjalo Group" which might include those other applicants.
- [10] On 7 August 2023, SG again lodged an application for leave to appeal the CAC order in the Constitutional Court which is pending. SG again sought an undertaking from Standard Bank not to close its accounts pending determination of the main applications in the High Court and Equality Court. Standard Bank, seemingly accepting that s 18(1) of the Superior Courts Act<sup>2</sup> automatically suspends the operation of an order of a lower court<sup>3</sup>, then agreed to extend the deadline for closure of SG's accounts **but only** until 15 September 2023, being the last working day before expiry of the Tribunal's extension order. This was communicated to SG's attorneys on 16 August

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<sup>2</sup> No 10 of 2013. See also, inter alia, *Minister of Finance v Sakeliga (previously known as Afribusines NPC) and Others* 2022 (4) SA 401 (CC) at para [16].

<sup>3</sup> Unless steps are taken by the successful litigant in terms of s 18(3) which has not occurred.

2023. The current applications before me were pursued on 18 August 2023 (High Court) and launched on 23 August 2023 (Equality Court).

[11] Although Standard Bank has criticised SG for delay in pursuing the present applications, I do not believe that SG's attorneys acted unreasonably by first attempting to secure an undertaking from Standard Bank for a further extension of the deadline to close its accounts in the particular circumstances. Standard Bank however remained intractable. Taking all the above facts into account I am persuaded that the urgency which resulted is genuine and nor is it self-created. Standard Bank even refused to undertake to suspend closure of SG's accounts pending this judgment right up until the morning of the hearing 2 days ago on 12 September 2023, and the papers themselves (which I received once paginated and indexed last Friday) run to almost 3000 pages. I have thus been placed under some pressure and as a result this judgment is not as comprehensive as I would have preferred. However I have, in the limited time available, carefully considered all of the submissions made by counsel and if I do not deal with any it is not because I have ignored them.

[12] Standard Bank argued that the interdicts sought are in reality final in effect. It is not necessary to deal with this argument given the conclusion I have reached as set out below and I will thus limit what follows to the requirements for an interim interdict. These are trite: (a) a prima facie right, although open to some doubt; (b) an apprehension of irreparable harm; (c) the balance of convenience favours the applicant; and (d) the absence of an adequate alternative remedy. I deal with each in turn.

**Prima facie right although open to some doubt**

[13] In the High Court interdict application SG asserts that its prima facie right (even if open to some doubt) lies in s 22 and s 34 of the Constitution. If Standard Bank is permitted to close the accounts at this stage, the purpose of the main relief sought will be defeated, because it is the very continuation of those banking facilities which is at the heart of the main dispute.<sup>4</sup> Put differently, SG submits that refusing the interdict would be tantamount to ignoring those rights and permitting Standard Bank to resort to self-help. In the Equality Court interdict application, SG relies on s 13(1) of the Equality Act which only requires a complainant to make out a case for discrimination on a prima facie basis.

[14] Standard Bank maintains that, not only does SG not enjoy the rights it asserts, but it cannot be forced to keep the accounts open since this would run contrary to its regulatory obligations, in particular s 21C and s 21E of FICA.<sup>5</sup> Furthermore SG's allegations of racial discrimination, says Standard Bank, have no basis in fact. In turn, SG set out at some length in the High Court interdict application why it says that: (a) Standard Bank did not rely on alleged contraventions of FICA, but rather primarily on so-called reputational risk in its termination notice of 25 April 2022; (b) Standard Bank's allegations of FICA contraventions are baseless; and (c) its averments of racial discrimination are well founded.

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<sup>4</sup> *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others* [2022] ZACC 44 at paras [241] to [251].

<sup>5</sup> Financial Intelligence Centre Act 38 of 2001.

[15] I have the following difficulties with Standard Bank's approach. First, it essentially requires me to put the proverbial cart before the horse in its favour. It is not for me to make any factual findings of the sort contended for by Standard Bank – that will be for the court in the main applications to decide. Second, this is not to say I would sanction any form of statutory contravention, but rather that Standard Bank's explanation in its termination notice of 25 April 2022 is not, at least on the face of it, clearly supportive of the one it now adopts. Third, if Standard Bank was so concerned about the grave violations it now asserts, one has to wonder why, in its attorney's letter of 14 November 2022, it offered to keep the accounts open while the Tribunal's order ran its course. It also did not seek suspension of that order. Fourth, and in any event, Standard Bank has failed to comply with its own undertaking regarding reasonable notice periods in its termination notice to which I have earlier referred. It seems to me that it has "taken the gap" of the expiry of the Tribunal order and now seeks to capitalise on it.

[16] Section 49(5) of the Competition Act<sup>6</sup> provides:

*'(5) If an interim order has been granted, and a hearing into that matter has not been concluded within six months after the date of that order, the Competition Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months.'*

[17] In *eMedia Investments (Pty) Ltd v Multichoice (Pty) Ltd and Others*<sup>7</sup> the CAC held that the 6 month period referred to in s 49(5) may be extended more than once. On 17 August 2023, SG applied to the Tribunal for an extension of the

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<sup>6</sup> No 89 of 1998.

<sup>7</sup> (248/CAC/JUL23) [2023] ZACAC 4 (16 August 2023) at paras [22] to [34].

order set to expire on 16 September 2023 until the end of December 2023. It would seem this followed upon the Competition Commission advising the attorneys representing those SG entities in the Commission's proceedings on 15 August 2023 that its investigation was ongoing; some of the affected banks had requested extensions to submit their responses by 15 September 2023; the Commission's investigation of the complaint expires at the end of December 2023; while the Commission had anticipated completing the investigation before 15 September 2023 on which the interim relief extension order expires, it was likely to proceed beyond September 2023; and the purpose of the Commission's update was to ensure that SG was apprised of the progress of the investigation '*so that you may timeously apply for an extension of the interim relief order, should you deem it necessary*'.

[18] Standard Bank (amongst others) have opposed the extension application. On 8 September 2023, SG filed an amended notice of motion before the Tribunal seeking that the order be extended for 6 months rather than to the end of December 2023. This sequence of events, according to Standard Bank, also dilutes the urgency of the applications before me. To my mind however it rather serve to reinforce the assertion of SG that it has a prima facie right, albeit open to some doubt, since the outcome of the application now pending before the Tribunal will also not be known by this Friday 15 September 2023.

**Reasonable apprehension of irreparable harm**

[19] SG's contention is straightforward: should Standard Bank terminate its banking facilities on 15 September 2023, that will render nugatory the entire main proceedings both in the High Court and Equality Court. It will also render nugatory the Constitutional Court application for leave to appeal pending against the decision of the CAC. Because of the indispensable nature of a banking account to a business entity, irreparable harm, SG maintains, is assured if its bank accounts were to be closed by Standard Bank. On the undisputed evidence SG employs over 1000 individuals who in turn have over 3500 dependants. SG asserts in the case of the majority of its entities, Standard Bank is the last remaining bank with which they hold accounts, and it has become abundantly clear to SG that these entities will not be accepted as new customers if they apply to other banks.

[20] Standard Bank's answer to this is essentially twofold: (a) SG cannot have a reasonable apprehension of irreparable harm since it may obtain redress in due course by seeking an order that a closed account be reopened; and (b) SG failed to produce evidence that it has approached any other banks to procure alternative facilities. To my mind Standard Bank's contentions miss the point. First, it should be self-evident that the redress in due course which Standard Bank asserts is hardly an answer to what will happen to SG's banking facilities and its operations as a whole while it sits out the "ordinary course". Second, and in the limited time I have had to peruse the papers, the only reasonable inference to be drawn – at least at this stage – is that SG's prospects of obtaining alternative approved banking facilities for most of its entities within the limited time available to it are poor at best.

[21] Moreover Standard Bank's belated denial that the majority of the entities have accounts with it was raised in an eleventh hour supplementary affidavit to which SG was not able to respond; and in addition the sheer volume of accounts which Standard Bank intends closing, listed on annexure "B" to its attorney's letter dated 21 July 2023, is in itself indicative of the fact that the accounts operated are hardly insignificant.

**Balance of convenience**

[22] There is a material dispute about whether or not Standard Bank is exposed to reputational risk by continuing its banking relationship with SG. Again, this is not for me to decide. Of relevance are Standard Bank's averments that in its considered view, SG is contravening various provisions of FICA, in particular s 21C and s 21E. As explained by Standard Bank, s 21C requires banks to conduct ongoing due diligence of their clients. If a bank is unable to do so, s 21E requires the bank to terminate its business relationship with the client. Standard Bank has, following a lengthy process, concluded that it is so required. SG, as indicated earlier, disputes that Standard Bank is correct in its view. Yet again, it is not a dispute which can, or should, be determined before me.

[23] To my mind what is significant, again only for present purposes, is that Standard Bank's complaints would surely have been known to it when it agreed via its attorneys on 14 November 2022, 10 months ago, not to close SG's accounts pending the outcome of its appeal/review to the CAC or expiration of the Tribunal order, and it also took no steps to obtain a

suspension. Put differently, if the consequences to Standard Bank (which seemingly first became apparent as far back as 2018) were so dire one has to wonder why it adopted the approach that it did. I emphasise that I do not express a view on the veracity or otherwise of Standard Bank's assertions about SG's non-compliance with the relevant provisions of FICA; but its past attitude goes directly to the weighing up of the balance of convenience. And when one does so it is difficult to resist the conclusion that, on an interim basis, the balance of convenience must favour SG.

#### **Absence of an adequate alternative remedy**

[24] SG contends it has no alternative remedy but to seek interim interdicts against Standard Bank from closing its accounts pending the final determination of the main applications in the High Court and Equality Court. The deponent to the supplementary founding affidavit stated:

*'84. Further, I have mentioned that some of the Applicants approached the Competition Tribunal for relief interdicting Standard Bank from terminating the banking accounts of the Applicants pending the process in the Competition Commission. To this process, Standard Bank responded that it is not bound to await the outcome but rather will react to an outcome. This clearly illustrates the need for approaching the Court. There is no alternative remedy. The Applicants have run out of options for effective relief against the Standard Bank juggernaut.'*

[25] As previously mentioned the Competition Commission has advised SG that its work will not be completed before December 2023. That some of the SG



entities have approached the Tribunal for a further extension order means that this, at least potentially, might be an alternative remedy available to them, albeit possibly in the short term. It is not clear from the papers why the other entities did not previously approach the Competition Commission as well. Be that as it may, and for the reasons that follow, I am not persuaded that interdicts should be granted to SG preventing Standard Bank from closing its accounts until the **final** determination of the main proceedings in the High Court and Equality Court at this stage.

[26] I was informed during the hearing that both those matters are being efficiently case managed by another Judge in this Division. However what is not in dispute is that those matters have been beset by delays and interlocutory applications (at least in part due to the fact that over 100 litigants are involved in each) and that Standard Bank is not able alone to control the pace at which those matters will become ripe for hearing.

[27] Given the pre-hearing status of those matters a real risk exists that they will not be ready for hearing in the near future. This in turn gives rise to the risk that interim interdicts, if granted for the duration sought by SG, could remain in place for a considerable, undetermined period of time. Although for the reasons I have already given, I am persuaded this court must come to the assistance of SG, the duration of the interim interdicts sought is so uncertain on the papers before me that, if granted, this might result in severe prejudice to Standard Bank.

[28] The interests of justice rather call for an interim interdict of more limited duration, subject to the parties being given leave to approach court again for an extension or discharge upon good cause shown. Such an approach will hopefully take into account the imponderables of: (a) the outcome of the pending application for leave to appeal to the Constitutional Court; (b) any further extension that may be granted by the Tribunal; and (c) the pace at which the parties in the main applications pending in the High Court and Equality Court proceed to render those matters ripe for hearing. It is also appropriate, in my view, that costs in the present applications should simply stand over for determination in the main applications.

[29] Finally, although termination notices were also allegedly issued by Standard Bank on 7 July 2022 and 26 July 2022, they do not appear to form part of the papers before me. However as far as I can glean Standard Bank has not advanced any independent defence in relation to these. It is thus fair to infer that the “belts and braces” approach adopted by SG for their inclusion in the relief sought should not result in separate self-standing prejudice to Standard Bank.

[30] **The following order is made:**

- 1. These applications are ruled urgent;**
- 2. ESP Africa (Pty) Ltd, Sizwe IT Group (Pty) Ltd, Kalula Communications (Pty) Ltd and the Parti Trust are joined as applicants in case number 9318/2022;**

3. Subject to paragraphs 4 and 5 below, Standard Bank is interdicted until Wednesday 11 September 2024, or final determination of the applications pending in the High Court under case number 13034/2022 and in the Equality Court under case number EC01/2022, whichever occurs first, from closing the applicants' banking accounts held with it for the reasons stated in its termination notices dated 25 April 2022, 7 July 2022 and 26 July 2022;
4. The order referred to in paragraph 3 above shall not apply to Standard Bank's statutory reporting obligations contained in section 29 of the Financial Intelligence Centre Act 38 of 2001;
5. In order to ensure the timeous exchange of papers and sufficient time for allocation to a Judge for hearing, the applicants and Standard Bank are granted leave to approach this court on the same papers, duly supplemented, after Monday 1 July 2024 and by no later than Wednesday 24 July 2024 to extend the order referred to in paragraph 3 above, alternatively for its discharge, on good cause shown;
6. Save as aforesaid the relief sought by the applicants is dismissed;  
and

7. **Costs shall stand over for determination in the main applications pending in the High Court under case number 13034/2022 and the Equality Court in case number EC 01/2022.**

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**J I CLOETE**

**Case No: 9318/2022**

For applicants: Adv Vuyani **Ngalwana** SC, Adv Karabo **Mvubu**,

Instructed by: Adriaans Attorneys (A Adriaans)

For respondent: Adv Robin **Pearse** **SC**, Adv Phumlani **Ngcongo**, Adv Zanele **Ngakane**

Instructed by: Herbert Smith Freehills South Africa (J Ripley-Evans)

**Case No: EC08/2023**

For applicants: Adv Muzi **Sikhakhane** SC, Adv Isaac **Shai**

Instructed by: Adriaans Attorneys (A Adriaans)

For respondent: Adv Robin **Pearse** **SC**, Adv Phumlani **Ngcongo**, Adv Zanele **Ngakane**

Instructed by: Herbert Smith Freehills South Africa (J Ripley-Evans)