



BANKING & FINANCE

Cryptocurrency is money and capital for exchange-control purposes

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1. Introduction

1.1. This case involved Mr Mangundhla and Ms Dangaiso, who both had trading accounts on the Luno platform, a well-known cryptocurrency trading platform.^[1] Ms Dangaiso does not trade in cryptocurrency, but her involvement in the case arose solely from the fact that Mr Mangundhla used her account to circumvent the limit that would ordinarily apply to the trades he could carry out using his account alone. Mr Mangundhla traded in cryptocurrency quite lawfully for an extended period between April 2015 and December 2017.^[2] However, from January 2018, Mr Mangundhla's behaviour on the accounts changed. Between January 2018 and March 2020, Mr Mangundhla used the accounts to 'funnel' just under 1680 Bitcoin purchased in the Republic of South Africa ("**South Africa**"), worth just under R182 million, to Bitcoin wallets that were only accessible through cryptocurrency exchanges registered outside South Africa.^[3]

1.2. The South African Reserve Bank ("**SARB**") took the view that the conduct amounted to the export of Bitcoin and the Rand value thereof, which was contrary to Regulation 10(1)(c) of the Exchange Control Regulations of 1961 ("**Excon Regulations**").^[4] Exercising its delegated powers under Regulation 22B of the Excon Regulations, the Deputy Governor declared forfeited to the State approximately R6 million in Bitcoin assets and the money standing to the applicants' credit in their respective bank accounts with The Standard Bank of South Africa Limited and Luno cryptocurrency trading accounts.^[5] The applicants sought to review and set aside the forfeiture orders, principally on the basis that the Excon Regulations do not apply to cryptocurrency.^[6]

1.3. In the Gauteng Division of the High Court, Wilson J was asked to determine the central question in this case – whether cryptocurrency (in this instance Bitcoin) constitutes either "money" or "capital" for the purposes of Regulation 10(1)(c) of the Excon Regulations. Wilson J concluded that it is **both "money" and "capital" for exchange control purposes.**^[7]

2. Is Cryptocurrency "Capital" in Terms of Regulation 10(1)(c) of the Excon Regulations?

2.1. In reaching his conclusion that Bitcoin is "capital", Wilson J began with the text of Regulation 10(1)(c) of the Excon Regulations, which provides that no person shall, except with permission granted by the Treasury, enter into any transaction whereby capital or any right to capital is directly or indirectly exported from South Africa.^[8]

2.2. Wilson J held that the effect of the Regulation must be determined by a consideration of the ordinary grammatical meaning of its text, the context in which the text appears and the purpose of the Regulation read in light of the overall purpose of the legislation in which it appears.^[9]

In considering the ordinary meaning of “capital”, Wilson J relied on the judgment by the Supreme Court of Appeal (“SCA”) in the case of *Oilwell (Pty) Ltd v Protec International Ltd 2011 (4) SA 394 (SCA)* (“**Oilwell Judgment**”), in which the SCA found that the Excon Regulations deploy the word “capital” in its financial sense, i.e. ‘*cash for investment*’ or ‘*money that can be used to produce further wealth*’.^[10]

2.3. The Oilwell Judgment, according to Wilson J, is not authority for equating “capital” to “money”, as there would be no differentiation between the words “capital” and “currency” in the Excon Regulations if that were so.^[11]

2.4. The court in Mangundhla used the purposive approach: the (i) ordinary meaning of the text, (ii) context within which the word was used and (iii) purpose of the legislation to conclude that “capital” in the Regulations means “*any financial asset that is capable of holding value or being used as a medium of exchange*”. This includes all fiat currency, but would also include any negotiable instrument, or any other document or token that bears a fixed or ascertainable exchange value.^[12]

2.5. Wilson J held that despite the “intangible and technological features” of Bitcoin, it is still a virtual currency, capable of holding value and being used as a medium of exchange i.e., capable of being exchanged for fiat currency, which makes it capital for purposes of the Excon Regulations.^[13]

2.6. The court held that the regulation of Bitcoin as capital is essential to maintain the effectiveness of the capital controls embodied in the Currency and Exchanges Act No 9 of 1933 and the Excon Regulations. Were it otherwise, those controls would be virtually worthless, as anyone who wished to take their money abroad could do so without Treasury oversight, simply by converting it into cryptocurrency and transferring it to a foreign cryptocurrency exchange.^[14] This would be completely at odds with the underlying purposes of the exchange control regime, which is to regulate, and, where necessary to curb, the outflow of capital.^[15]

2.7. Wilson J held that Motha J in *Standard Bank of South Africa v South African Reserve Bank 2025 (5) SA 289 (GP)* (“**Standard Bank Judgment**”) erred in focusing on the nature and “*intangible and technological characteristics*” of cryptocurrency rather than the real world consequences of its use.^[16] Wilson J concluded that courts should be careful not to ascribe unusual or irreducibly exotic properties to phenomena which, though novel and perhaps unique in some respects, exhibit precisely the attributes an enactment is intended to regulate.^[17]

2.8. The court in Mangundhla reaffirmed that a court's function in interpreting statute is to give its meaning in terms of text, context and the purpose of the legislation, even if such interpretation attracts “*harsh consequences*”.^[18] The law is to be applied as it is found.^[19]

3. Is Cryptocurrency “Money” in Terms of Regulation 22A and 22B?

3.1. The applicants submitted that the forfeiture orders applied only to the money in their respective bank accounts, but not to the Bitcoin in their respective Luno wallets, as Bitcoin does not constitute “money” or “goods” in terms of Regulations 22A and 22B of the Excon Regulations.^[20]

3.2. “Money” under the Excon Regulations is defined to include “*any bill of exchange or other negotiable instrument*”.^[21]

3.3. Wilson J held that the qualities he attributed to Bitcoin are sufficient to bring it within the definition of a “negotiable instrument” in that it is no more than a right to be credited a specified sum of Bitcoin, which is itself exchangeable for fiat currency and other things of value.^[22] In addition, Wilson J held that even if the foregoing is incorrect “*Bitcoin's general characteristics bring it well within any sensible conception of money*”, as it (i) can be converted into fiat currency, (ii) can also be used directly to purchase goods and services from merchants who accept it, (iii) is a medium of exchange and (iv) a store of value.^[23]

3.4. In Wilson J's view, Bitcoin is clearly money. Accordingly, the Bitcoin was correctly subject to forfeiture.^[24]

Conclusion

This judgment by Wilson J is significant for several reasons. First, it applies a purposive approach to the interpretation of the Excon Regulations and concludes that Bitcoin is both “capital” and “money” for the purposes of the exchange control regime. Second, Wilson J concludes that the Standard Bank Judgment is wrong, creating a conflict in authority in the Gauteng Division of the High Court on the question of whether cryptocurrency falls within the ambit of the Excon Regulations. Third, the judgment confirms that the transfer of Bitcoin to cryptocurrency wallets on exchanges registered outside South Africa amounts to the “export” of capital, even if the wallets can be accessed from anywhere in the world.^[25]

The review application was dismissed and the forfeiture orders were upheld. Wilson J did, however, express some hesitation in endorsing the forfeiture order made against the money in Ms Dangaiso's bank account, noting that given her apparently limited involvement in Mr

Mangundhla's activities, an order for forfeiture against her might be disproportionate. However, no such case had been made out by the applicants.^[26]

[1] Mangundhla and Another v The South African Reserve Bank and Others (2022/029979) [2026] ZAGPJHC 579 (1 June 2026), para 2

[2] Ibid

[3] Ibid

[4] Supra, para 3

[5] Ibid

[6] Supra, para 6

[7] Supra, paras 13 and 34

[8] Supra, para 10

[9] Supra, para 11

[10] Supra, para 12

[11] Supra, para 13

[12] Ibid

[13] Supra, para 14

[14] Supra, para 18

[15] Ibid

[16] Supra, para 24

[17] Ibid

[18] Ibid

[19] Ibid

[20] Supra, para 33

[21] Supra, para 34

[22] Ibid

[23] Ibid

[24] Ibid

[25] Supra, para 26

[26] Supra, para 35



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