



BANKING & FINANCE

Is cryptocurrency ‘capital’? Taking the Mangundhla judgment under the loop

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1. Introduction

Two Gauteng Division judgements have reached diametrically opposite conclusions on the question as to whether cryptocurrency constitutes “capital” for the purposes of the Exchange Control Regulations, 1961 issued in terms of the Currency and Exchanges Act, 1933 (the “**Regulations**”). In *Standard Bank of South Africa v South African Reserve Bank and Others* 2025 (5) SA 289 (GP), Motha J held that cryptocurrency falls outside the ambit of the Regulations entirely. Barely a year later, in *Mangundhla and Another v South African Reserve Bank and Others* 2026 JDR 2449 (GJ), Wilson J expressly disagreed, finding that cryptocurrency is plainly “capital” under Regulation 10(1)(c). This article examines the reasons why Wilson J concluded that the Standard Bank decision was “clearly wrong”.

2. The Standard Bank case: ‘Cryptocurrency falls outside the ambit of the regulations’

In the Standard Bank case, the South African Reserve Bank had ordered the forfeiture of approximately R16.4 million on the basis that LCC had contravened Regulations 3(1)(c) and 10(1)(c). Motha J held that cryptocurrency is neither currency nor capital, observing that “the construction that cryptocurrency is money, by looking at the definition of money which includes foreign currency, is strained and impractical.” He found that, given the punitive nature of the Regulations, there was “no room for an unnatural and fictitious reading” so as to apply to cryptocurrency, and that “on any construction, much less on a restrictive interpretation, cryptocurrency falls outside the ambit of capital under Reg 10(1)(c).” The judgement has been appealed and its findings are therefore not currently in effect.

3. The Mangundhla case: ‘Cryptocurrency is plainly capital’

In the Mangundhla case, Mr Mangundhla had used cryptocurrency trading accounts to purchase approximately 1,680 Bitcoin, worth just under R182 million, and transfer same to Bitcoin wallets accessible only through cryptocurrency exchanges registered outside South Africa. The South African Reserve Bank ordered the forfeiture of approximately R6 million on the basis that the transactions contravened Regulation 10(1)(c).

Wilson J approached the question as an exercise in statutory interpretation, applying the tripartite test of text, context and purpose. Wilson J accepted that “capital” in the Regulations refers to capital in its financial sense, closely identified with “cash for investment” or “money that can be used to produce further wealth.” However, Wilson J distinguished “capital” from “currency,” noting that the two terms are deployed in the Regulations to mean different things. The court regarded “capital” as “any financial asset that is capable of holding value or being used as a medium of exchange,” a category which includes fiat currency but extends to any document or token bearing a fixed or ascertainable exchange value.

Based on this reasoning, Wilson J found that Bitcoin is “plainly capital” because it is a financial asset capable of holding value and being used as a medium of exchange. Wilson J also considered the purpose of the Regulations, finding that the regulation of Bitcoin as ‘capital’ is essential to maintain the effectiveness of capital controls. Were it otherwise, the exchange control regime “would be virtually worthless, as anyone of any means 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.”

4. Judge Wilson’s criticism of the judgment in the Standard Bank case

Wilson J expressly considered and rejected the Standard Bank decision. Wilson J found Motha J’s reasoning to be flawed on several grounds – Wilson J:

- held that Motha J had placed undue emphasis on the intangible and technological characteristics of cryptocurrency, which amounted to what Wilson J described as “a degree of magical thinking which misconstrues the nature of money, underplays the destructive effects of unregulated capital flows, and ignores the fundamental purpose of the Exchange Control Regulations.” The critical question is not the inherent nature of cryptocurrency, but the purposes to which it can be put. To the extent that cryptocurrency is a financial asset that holds value and can move capital beyond South Africa’s borders, its technological novelty is irrelevant. Wilson J cautioned 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.”
- disagreed with Motha J’s reliance on the principle that punitive statutes require restrictive interpretation. Whilst acknowledging that principle, Wilson J held that the overriding function of a court is to give a statute the appropriate meaning in light of its words, context and purpose. Where the only reasonable interpretation is that a statute intends to attach harsh consequences to defined conduct, the statute must be applied as it is found. The three-fold purpose of the Regulations, as articulated by the Supreme Court of Appeal in *South African Reserve Bank v Leathern NO* 2021 (5) SA 543 (SCA), is to prevent the loss of foreign currency resources, ensure effective control of the movement of financial assets into and out of South Africa, and avoid interference with the country’s commercial and financial system. All three purposes would be frustrated by excluding cryptocurrency from the definition of capital.
- dismissed the relevance of various reports published by entities associated with the South African Reserve Bank suggesting that cryptocurrency might not be adequately regulated by the existing framework. Nor was it relevant that the drafters of the Currency and Exchanges Act and Regulations in the 1930s and 1960s could not have foreseen cryptocurrency; they “certainly knew all about the nature of financial assets, negotiable instruments, and fiat currency” and would have had no difficulty understanding the essentials of Bitcoin.

5. Conclusion

The Mangundhla judgement represents a significant departure from the Standard Bank decision, creating legal uncertainty because two judges of the Gauteng Division have now reached opposite conclusions on the same legal question, with neither judgement binding on the other. In April 2026, the draft Capital Flow Management Regulations were published, seeking inter alia to formally include cross-border transfers of crypto assets within the exchange control framework. The conflict may be settled when a higher court resolves the issue, or these draft Regulations become law and are not challenged.



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