

SOUTH AFRICA / JUDGMENT

Maynard v Carrick Wealth (Pty) Limited (21243/23) [2024] ZAWCHC 370 (15 November 2024) [2024] ZAWCHC 370

COURT

Western Cape High Court, Cape Town

BEFORE

M W Janisch

CASE / FILE NUMBER

21243/23

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

Case

Number: 21243/23

In

the matter between:

GILES
ALEXANDER POWER MAYNARD
Applicant
and
CARRICK
WEALTH (PTY)
LIMITED
Respondent

JUDGMENT

JANISCH AJ:

Introduction

1. This matter involves the process for the debarment of representatives of financial services providers (“FSPs”) as envisaged in section 14 of the Financial Advisory and Intermediary Services Act 37 of 2002 (“the FAIS Act”).
 2. The Applicant, who until 31 October 2023 was a representative of the Respondent for purposes of the FAIS Act, seeks final relief pertaining to debarment proceedings initiated against him by the Respondent on 8 November 2023.
 3. The substantive relief sought is as follows:
 - 3.1. an order declaring “that the respondent compromised whatever right it might have had to initiate debarment proceedings in terms of section 14(3)(a) of the [FAIS Act]”;
 - 3.2. an order “declaring the initiation of the debarment proceedings to be unlawful”; and
 - 3.3. an order “setting aside the debarment proceedings and interdicting the Respondent from continuing with them.”
 4. On 8 December 2023, this Court (per Van Heerden AJ) granted the Applicant urgent interim relief under Part A of the application. This comprised an interdict against the continuation of the debarment proceedings, pending the determination of final relief under Part B.
 5. Part B of the application is now before me. The papers are by and large those that served before Van Heerden AJ. However, a month before the hearing, the Applicant gave notice that he would seek leave to file a supplementary affidavit. The Respondent did not oppose the application and filed its answering affidavit. I have therefore also had regard to those affidavits.
 6. The Applicant seeks final orders on motion. To succeed, he must establish his case on the basis of the facts put up by the Respondent, together with those facts averred by him that the Respondent cannot deny. The factual version put up by the Respondent will only be disregarded if, exceptionally, it can safely be rejected on the papers alone (*Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984
- (3) SA 623 (A), *Media 24 Books (Pty) Limited v Oxford University Press Southern Africa (Pty) Limited* 2017
- (2) SA 1 (SCA) in para [36]).

The material facts

7. The facts are largely common cause. There are however certain averments that are disputed and that must be adjudged on the *Plascon-Evans* approach. These pertain primarily to the Respondent’s purpose in commencing the debarment proceedings on 8 November 2023. I address this aspect below.

The employment relationship and its termination

8. The Applicant is a private wealth manager who specialises inter alia in setting up overseas trusts for high-net-worth individuals.
9. The Respondent is an FSP, licensed as such under section 8 of the FAIS Act. It operates in the financial advising and wealth management industry.
10. The Applicant was employed by the Respondent from January 2018, initially in the position of Wealth Specialist and subsequently as Regional Sales Manager.
11. In terms of the Applicant's written contract of employment as Regional Sales Manager, he was subject to confidentiality obligations and a restraint of trade. He contends that that agreement terminated on 20 April 2023 with the conclusion of a "separation agreement" between the parties. The Applicant avers that the result was that the restraint of trade provisions in his erstwhile contract of employment ceased to apply. The Respondent denies this conclusion, without elaboration, but contends that it is irrelevant. What is at least common cause is that the parties were in dispute as to whether the Applicant was under a contractual restraint of trade after 20 April 2023.
12. The Applicant says that after the separation agreement was concluded, it was envisaged that he would be employed by the Respondent in the position of Private Wealth Manager. The Respondent presented him with a draft contract of employment, which included restraint of trade provisions. He says that he was dissatisfied with this offer, including the restraint of trade component. He notified the Respondent on 26 September 2023 that he would be terminating his employment with effect from 31 October 2023.
13. The Applicant also told the Respondent's CEO and its Managing Director that he intended to open his own business in the same industry and to compete with the Respondent's business. As it turned out, he did not start his own business but joined a competitor of the Respondent (to which I will refer to as "Competitor A").

Discussions regarding the Applicant's departure and the email to Ms Lategan

14. The Applicant entered into discussions with the Respondent about the terms of his departure. These included the possibility of his "buying" certain of the Respondent's customers, namely friends, family and acquaintances of the Applicant that he had brought into the Respondent's business. By this I understand was meant paying an amount to the Respondent in exchange for the right to continue servicing those clients. He says that the Respondent's Managing Director "demanded" that he determine a "reasonable price" for "buying" those customers. Save to deny that this was a demand, the Respondent accepts this evidence.

15. The Applicant states that, with a view to ascertaining what a reasonable price would be, he emailed a “relevant client list” to an erstwhile employee of the respondent, Ms Lategan, whom he envisaged employing in his new venture. This occurred on 11 October 2023. The Applicant does not explain how Ms Lategan would have been able to assist him with this exercise, apart from saying that she had been previously employed in an administrative / clerical position with the Respondent.
16. There is a dispute on the papers as to exactly what documents the Applicant emailed to Ms Lategan. I need not decide that aspect because it is common cause that, at the very least, he sent a list containing the names of some 80 clients of the Respondent, not all of whom were the Applicant’s immediate family or friends. This list included various items of information pertaining to those clients, including the total value of their assets under management.
17. At the time of sending this information to Ms Lategan, the Applicant had already commenced discussions with Competitor A in relation to his possible employment there – including the possibility of becoming a shareholder and director. He had also had exploratory discussions with another competitor (“Competitor B”).
18. On 13 October 2023, the Applicant received a letter of demand from the Respondent’s attorneys.
19. The letter alleged, amongst other things, that the Applicant was subject to a restraint of trade agreement, that he had “accepted to operate under a competitor’s financial services licence” (this apparently being a reference to Competitor B) as opposed to starting his own business, that he had “gone live” with a new website for his business while still in the employ of the Respondent, and that he had “solicited” Ms Lategan whilst still in the Respondent’s employ. Most relevantly for present purposes, it averred that he had emailed Ms Lategan “a confidential client list, clearly with the intention of soliciting such clients”. The Respondent demanded various undertakings of restraint and confidentiality (including the destruction of the client information sent to Ms Lategan). It also terminated the negotiations with the Applicant.
20. On 16 October 2023, the Applicant was prevented from entering the Respondent’s premises and was also prohibited from rendering services during his notice period, which was due to end on 31 October 2023.
21. The Applicant (through attorneys) responded to the letter of demand on 18 October 2023. He denied that there was an extant restraint of trade agreement. He stated that he had sent the list of customers to Ms Lategan “with a view of obtaining her assistance in determining a reasonable price for ‘buying’ those customers as demanded by your client”. He pointed out that Ms Lategan was subject to her own obligations of confidentiality towards the Respondent and had not disclosed the list to anyone else. He nonetheless undertook to abide by his confidentiality obligations and to delete any confidential information that was in his possession.

The settlement agreement

22. The parties thereafter entered into discussions that culminated in the conclusion of a settlement agreement on 7 November 2023.
23. Material terms of the settlement agreement were as follows:
- 23.1. it was acknowledged that a dispute existed as to whether the separation agreement of 20 April 2023 constituted a novation of the earlier employment agreement, which contained a restraint of trade provision;
- 23.2. it was further recorded that the parties had engaged in discussions in relation to the “full and final settlement of all disputes between them” and wished to record the terms of the settlement in the agreement;
- 23.3. the parties acknowledged that they had entered into the agreement “after having full knowledge and understanding of their position”;
- 23.4. the Applicant agreed not to provide services to or solicit business from any existing customers of the Respondent with whom he had had dealings while employed, up and until 31 March 2024. This was however subject to two exceptions:
- 23.4.1. 15 customers (being family and close friends of the Applicant) were excluded from the restriction. It was recorded that the Applicant “may immediately provide financial services to these customers”; and
- 23.4.2. a further 6 customers were excluded from the restriction on the basis that the Applicant would be permitted to provide financial services to them as from 1 January 2024;
- 23.5. the Applicant undertook not to disclose confidential information or trade secrets of the Respondent to third parties, not to use such information or secrets in a manner that could cause loss to the Respondent, and to destroy all confidential information in his possession; and
- 23.6. under the heading “full and final settlement” it was agreed as follows:
- “This agreement is in full and final settlement of all and any claims which the parties may have against each other, whether such claims arise from contract, delict, operation of law, equity or otherwise.”*
24. As soon as the settlement agreement had been entered into, the Applicant concluded an employment agreement with Competitor A which also envisaged his becoming a shareholder and director.

The FAIS notice

25. On 8 November 2023 (the day after the settlement agreement was concluded), the Respondent delivered to the Applicant a “Notice of Enquiry – Section 14 of [the FAIS Act]” (“the FAIS notice”).

26. In the FAIS notice, the Respondent contended that facts and information pertaining to the Applicant's conduct as a representative during his employment with the Respondent had become known to it that prima facie established, and/or tended to show, that the Applicant did not meet, or no longer complied with, the "fit and proper" provisions in section 13(2)(a) of the FAIS Act, alternatively that he had contravened or failed to comply with provisions of the FAIS Act in a material manner. It gave notice of the Respondent's intention to debar the Applicant as a representative.
27. The "facts and information" on which the intended debarment was premised were set out in an annexure to the FAIS notice. Specific reliance was placed on an alleged breach of section 3(3) of the General Code of Conduct for Authorised Financial Services Providers and their Representatives ("the General Code").
28. The General Code was published in the Government Gazette on 23 August 2003, in accordance with section 15(1) of the FAIS Act. That section provides that upon publication of such a code of conduct, it "becomes binding on all authorised [FSPs] and representatives referred to therein". Moreover, the definition of "this Act" in section 1 of the FAIS Act specifically includes any regulation, rule or code of conduct (the latter being defined as a published code of conduct contemplated in section 15).
29. Paragraph 3(3) of the General Code provides as follows (in relevant part):
- "A provider [which includes a representative] may not disclose any confidential information acquired or obtained from a client ... unless the written consent of the client ... has been obtained beforehand or disclosure of the information is required in the public interest or under any law."*
30. In the FAIS notice, the Respondent alleged that on 11 October 2023 the Applicant had transmitted by email a spreadsheet containing confidential client information to an external third party, without the clients' consent. This of course was a reference to the Applicant's email to Ms Lategan.
31. In accordance with section 14(3)(a)(iii) of the FAIS Act, the Applicant was given until 8 December 2023 to make submissions in response to the notice, before any decision was taken in relation to his possible debarment.
32. In a letter to the Respondent dated 14 November 2023, the Applicant's attorneys contended inter alia that the settlement agreement precludes the Respondent from engaging in debarment proceedings, and therefore that the FAIS notice constituted a breach of that agreement.
33. The letter also contended that the FAIS notice was a transparent

attempt to prevent the Applicant from competing with it in circumstances where it could not enforce a restraint of trade agreement. It demanded the withdrawal of the FAIS notice and the “vexatious FAIS proceedings”.

34. The Respondent’s answer, sent on 23 November 2023, was that it had a statutory duty or obligation to debar the Applicant. Failure to comply with section 14 of the FAIS Act could lead to regulatory action against it. On the basis that it had no discretion or election on whether to proceed against the Applicant, and that such proceedings could not be “settled” under civil proceedings or in terms of a contract, the Respondent refused to withdraw the FAIS notice.

This application

35. The Applicant did not make written representations in response to the FAIS notice, as he was invited to do, but launched the urgent proceedings on 26 November 2023. The application was opposed. I have set out above the essential facts as they appear from the papers.

36. It bears mentioning that in its answering affidavit, the Respondent

undertook that if the debarment proceedings were permitted to continue, it would appoint an independent senior counsel to make the debarment decision, by which it would consider itself bound.

37. As stated, this Court granted the Applicant interim relief as prayed under Part A, thus halting the further conduct of the debarment proceedings. It directed further that the costs of Part A be determined together with Part B.

The statutory framework

38. The FAIS Act regulates the conduct of an FSP, defined as:

“any person, other than a representative, who as a regular feature of the business of such a person –

- (a) furnishes advice; or
- (b) furnishes advice and renders any intermediary service; or
- (c) renders an intermediary service.”

39. The services envisaged in sub-paragraphs (a) to (c) constitute “financial services” as defined.

40. A “representative” is defined in relevant part to mean:

“...any person, including a person employed or mandated by such first-mentioned person, who renders a financial service to a client

for or on behalf of a financial services provider, in terms of conditions of employment or any other mandate ...”

41. Section 7 of the FAIS Act provides inter alia that a person may not act or offer to act as:
- 41.1. an FSP, unless such person has been issued with a licence under section 8; or
- 41.2. a representative, unless such person has been appointed as a representative of an authorised FSP under section 13.
42. Section 13 of the FAIS Act sets out various restrictions on a person acting as a representative of an FSP. Of relevance to the present matter is section 13(1)(b)(iA), which provides that a person may not do so “unless such person meets the fit and proper requirements”.
43. The term “fit and proper requirements” is defined to mean the requirements referred to in section 6A of the FAIS Act. That section, in turn, requires the registrar, for purposes of the FAIS Act, by notice in the Gazette inter alia to determine fit and proper requirements for each category of financial service provider, including representatives of FSPs. Such requirements may in terms of section 6A(2)(a) include “appropriate standards relating to personal character qualities of honesty and integrity”.
44. In Board Notice 194 of 2017, gazetted on 15 December 2017, the registrar determined fit and proper requirements for FSPs. The requirements in relation to personal character qualities of honesty and integrity are set out in chapter 2. Section 9(1) lists various “incidents” that constitute prima facie evidence that a person does not qualify as one who is honest and has integrity. This includes the situation (sub-paragraph (l)) where the person “has demonstrated a lack of readiness and willingness to comply with legal, regulatory or professional requirements and standards”.
45. In terms of section 9(3) of the Board Notice, in assessing whether a person meets the requirements of integrity and good standing, due regard must be had to: (a) the seriousness of a person’s conduct or behaviour, and surrounding circumstances to that conduct;
- (b) the relevance of such conduct to the person’s duties and responsibilities; and (c) the passage of time since the occurrence of the conduct or behaviour.
46. The debarment mechanism in section 14 of the FAIS Act is a key statutory mechanism for regulating the ability of persons to act as representatives. The duty to effect debarment is essentially devolved to FSPs themselves.
47. Debarment is part of what was described in *Associated Portfolio Solutions (Pty) Limited v Basson* 2020 (1) SA 341 (SCA) in paragraph [20] as “a system of self-regulation in which licensed FSPs ensure that their representatives and key individuals are fit and proper persons to be entrusted with providing financial advice to the investing public.”
48. In terms of section 14(1)(a) of the FAIS Act:

“an authorised [FSP] must debar a person from rendering financial services who is or was, as the case may be –

(i) a representative of the [FSP] ...

if the [FSP] is satisfied on the basis of available facts and information that the person –

(iii) does not meet, or no longer complies with, the requirements referred to in section 13(2)(a);
or

(iv) has contravened or failed to comply with any provision of this Act in a material manner.”

49. The reasons for a debarment must have occurred and become known to the FSP while the person was a representative of the FSP (section 14(1)(b)). Section 14(5) provides that a debarment that is undertaken in respect of a person who is no longer a representative of the FSP must be “commenced” no longer than six months from the date on which the person ceased to be a representative of the FSP.

50. Section 14(2) provides that, before “effecting” a debarment in terms of section 14(1), the FSP must ensure that the “debarment process” is lawful, reasonable and procedurally fair. Section 14(3) fleshes out the aspect of procedural fairness. It provides that the FSP must give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons for the debarment, and any terms attached to the debarment. It must provide the person with a copy of the FSP’s written policy and procedure governing the debarment process. It must give the person a reasonable opportunity to make a submission in response (i.e. in response to the notice and its contents) (section 14(3)(a)). The FSP must consider any such response and then take a decision in terms of subsection (1) (section 14(3)(b)). The FSP must also notify the person in writing of the FSP’s decision and the person’s rights in terms of Chapter 15 of the Financial Sector Regulation Act 9 of 2017 (“the FSRA”).

51. Chapter 15 of the FSRA establishes the Financial Services Tribunal
 (“the Tribunal”).

52. In terms of section 230 of the FSRA, a person aggrieved by a “decision” as defined may apply to the Tribunal for a reconsideration of the decision. The term “decision” is defined in section 218 to include “a decision by an authorised financial services provider ... in terms of section 14 of the [FAIS Act] in relation to a specific person”.

53. The far-reaching effect of debarment is set out in section 14(9) of the FAIS Act. This provides that a person debarred may not render financial services or act as a representative or key individual of a representative of any FSP, unless that person has complied with the requirements referred to in section 13(1)(b)(ii) for the reappointment of a debarred person as a representative or key individual of a representative.

54. Debarment, and the associated debarment process, constitute the exercise of public power. As stated in Basson (supra) in paragraph [25]:

“The appellants [FSPs], being private juristic entities, exercised their authority under s 14(1) of the FAIS Act to debar Mr Basson. In doing so they acted in furtherance of the objects of the FAIS Act – and in the public interest. They exercised public power in terms of that Act. The debarment had an adverse impact and direct, external legal effect on his rights. It was not in dispute that the debarment of Mr Basson was an administrative action and that it was therefore reviewable under s 6(2) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).”

55. Consistent with the above, section 230(1)(b) of the FSRA provides that a reconsideration of a decision by the Tribunal “constitutes an internal remedy as contemplated in section 7 (2) of [PAJA]”. Thus, although a person who has been debarred may challenge that decision by way of judicial review under PAJA, they would in the ordinary course first have had to exhaust the remedy of a reconsideration by the Tribunal.

56. I now turn to considering the issues in dispute in the present application, having regard to the legal framework set out above.

The

issues

57. The Respondent has not yet taken a decision in terms of section 14(1) to debar the Applicant.
58. The Applicant however impugns the Respondent’s initiation of debarment proceedings, which occurred through the issue of the FAIS notice under section 14(3)(a).
59. In essence, the Applicant wants this Court to stop the debarment process in its tracks permanently, so that the Respondent is precluded from taking a section 14(1) debarment decision in relation to the Applicant’s conduct as alleged in the FAIS notice. He does so by asking for declaratory orders that the Respondent compromised its right to initiate such proceedings by way of the settlement agreement, and that the initiation was in any event unlawful. In consequence, he seeks final orders “setting aside” the debarment proceedings already instituted, and interdicting the Respondent from continuing with them.
60. The Respondent contends that it cannot in law be precluded from initiating the debarment process by virtue of an agreement not to so do, and in any event denies that the settlement agreement purports to preclude it from doing so. It also denies that it acted unlawfully in initiating the process.
61. Before addressing the merits of the dispute, it is necessary to analyse the section 14 debarment process, and to determine the nature and scope of the powers and duties to which it gives rise.

The statutory debarment process analysed

62. It is apparent from the language of section 14 that a distinction must be drawn between a debarment decision and the process leading up to it.
63. Section 14(1) requires an FSP to debar a person in certain circumstances. A debarment is “effected” through a decision in terms of section 14(1) (see section 14(4)); and the section 14(9) consequences pertain to “a person debarred in terms of subsection (1)”. In that sense, it is only the final decision by the FSP under section 14(1) that is a “debarment”.
64. In *Basson* (supra), it was held that a debarment constituted “administrative action” as defined in PAJA, because it was a decision that had an adverse impact and a direct, external legal effect on the respondent’s rights.
65. Although section 14(5) refers to the commencing of “a debarment”, in context the mandatory process envisaged in section 14(3) is not itself a debarment: the section 14(9) consequences do not apply until the debarment decision is taken.
66. The question then arises as to the legal status of the decision to commence a debarment process.
67. In my view, the decision to commence a debarment process by issuing a section 14(3) notice is not “administrative action” for PAJA purposes because it is a preparatory step and not one that itself has a direct, external legal effect.
68. In *Viking Pony Africa Pumps (Pty) Limited t/a Tricom Africa v Hidro-Tech Systems (Pty) Limited* 2011 (1) SA 327 (CC), the Court considered regulations issued in terms of the Preferential Procurement Policy Framework Act 5 of 2005. The relevant regulation read as follows:
- “An organ of State must, upon detecting that a preference in terms of the Act and these regulations has been obtained on a fraudulent basis, or any specified goals are not attained in the performance of the contract, act against the person awarded the contract.”*
69. At issue was whether the duty on the local authority to “act against” the appellant had arisen at a time when there was no final factual determination of a fraudulent preference, and the matter was still under investigation. This turned on the meaning of the word “detect”.
70. The Court interpreted the word “detect” widely, holding as follows (in para [31]):
- “... [I]t is not the existence of conclusive evidence of a fraudulent misrepresentation that should trigger responsive action from an organ of State. It is the awareness of information which, if verified through proper investigation, could potentially expose a fraudulent scheme”.*
71. The Court concluded that the local authority’s acquiring

knowledge of such information triggered its duty to “act against” the appellant, which action included conducting an appropriate investigation designed to respond adequately to the concern, as well as the determination of culpability and any penalty (para [36]).

72. The question that arose was whether the conduct of the local

authority in commencing the investigation amounted to administrative action under PAJA.

Having acknowledged that “administrative action” includes “action that has the capacity to affect legal rights” (cf. *Grey’s Marine Hout Bay (Pty) Limited v Minister of Public Works* 2005 (5) SA 313 (SCA) in para [23]), the Court stated as follows (in para [38]):

“It is unlikely that a decision to investigate and the process of investigation, which excludes a determination of culpability, could itself adversely affect the rights of any person, in a manner that has a direct and external legal effect.”

73. This is consistent with various cases in which it has been held that conduct preparatory to administrative action is not “administrative action” for PAJA purposes. A recent example is *Commissioner for the South African Revenue Service v Absa Bank Limited* 2024 (1) SA 361 (SCA), in which it was held that the decision on the part of SARS to issue a taxpayer with a notice in terms of section 80J(3) of the Income Tax Act 58 of 1962, to the effect that it was considering imposing an assessment on general anti-avoidance grounds,

was not a final decision that placed any adverse burden upon the taxpayer. A decision not to withdraw the notice likewise had no

adverse impact or effect. As the Court held in para [21]: “if the issuing of a notice does not constitute administrative action susceptible to review then, as a matter of logic, a decision to keep it extant cannot constitute administrative action.”

74. In my view, the decision to commence or initiate debarment

proceedings through the issue of a notice in terms of section 14(3)(a) is of the same nature, because it does not yet place any adverse burden on the representative and has no external legal effect on his or her status.

75. Nonetheless, the mere fact that the decision to initiate may not be “administrative action” for purposes of PAJA does not mean that it does not constitute the exercise of public power. Exercises of public power that do not fall under PAJA are still open to review under the principle of legality, which is ultimately grounded in the Constitution (*Pharmaceutical Manufacturers Association of South Africa: In re Ex Parte President of the Republic of South Africa* [2000] ZACC 1; 2000 (2) SA 674 (CC) in paragraphs [17] to [44]). I return to this below.

76. The distinction between a debarment decision in terms of section

14(1) and a decision to commence a debarment process that may or may not lead to a debarment played a role in the submissions made by the Applicant in support of the relief sought.

77. In essence, the Applicant sought to distinguish between the duty of an FSP to debar in the circumstances reflected in section 14(1), and the circumstances in which the FSP could or should commence a debarment process. This went to the question of whether it was possible to conclude a binding agreement not to commence a debarment process.
78. There is no dispute that section 14(1) places a duty or obligation on an FSP to debar where the requirements of the section are met. This is apparent, in the first instance, from the peremptory language of the section: the FSP "must" debar a representative from rendering financial services where it is "satisfied" on the basis of available facts and information that the person does not meet the "fit and proper" requirements or has contravened or failed to comply with the FAIS Act in a material manner.
79. The obligatory nature of debarment where the circumstances for it are present is consistent with the purpose of the statute. In Basson (supra), it was held that debarring a person was an act "in furtherance of the objects of the FAIS Act – and in the public interest". The system of self-regulation involved FSPs "ensuring that their representatives... are fit and proper persons to be entrusted with providing financial advice to the investing public".
80. In the same vein, the following was stated in *Financial Services Board v Barthram* 2018 (1) SA 139 (SCA) in para [16] (my underlining):
- "The debarment of the representative by a FSP is evidence that it no longer regards the representative as having either the fitness and propriety or competency requirements. A representative who does not meet those requirements lacks the character qualities of honesty and integrity or lacks competence and thereby poses a risk to the investing public generally. Such a person ought not to be unleashed on an unsuspecting public and it must therefore follow that any representative debarred in terms of section 14(1), must perforce be debarred on an industry-wide basis from rendering financial services to the investing public."*
81. In terms of section 36(a) of the FAIS Act, a person who contravenes or fails to comply with a provision inter alia of section 14(1) is guilty of an offence and is liable on conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both such fine and such imprisonment.
82. The above factors (i.e. the peremptory language, the public interest nature of the debarment power, and the fact that an FSP's failure to comply is a criminal offence) make it clear that section 14(1) does not merely bestow a right or power on the FSP that it could decide whether or not to exercise, but an obligation to do so.
83. However, the question that arises is whether a similar duty or obligation exists to commence or initiate debarment proceedings and, if so, when that obligation arises. Section 14(1) is silent as to these issues, although it does oblige the FSP to take the aforementioned procedural steps before debarring.

84. In my view, it follows by necessary inference from (i) the existence of a duty to debar, and (ii) a duty to follow due process before doing so, that there must also be a duty to initiate debarment proceedings in appropriate circumstances. If that were not the case, an FSP could avoid having to debar a representative in the public interest, and avoid criminal sanction for non-compliance with section 14(1), simply by not initiating such proceedings in the first place. That would be inimical to the public interest purpose of section 14(1).
85. Unlike the procurement regulation dealt with in *Viking Pony* (supra), section 14(1) does not contain a provision that regulates when the duty to initiate arises. In *Viking Pony*, the obligation was expressly triggered upon the local authority “detecting” that a fraudulent advantage had been obtained. The case is nonetheless instructive.
86. The Court in *Viking Pony* held that “detecting” in that context did not mean reaching a conclusive finding. It stated as follows (in paragraph [31] – my underlining):

“I am satisfied that 'detect' generally means no more than discovering, getting to know, coming to the realisation, being informed, having reason to believe, entertaining a reasonable suspicion, that allegations, of a fraudulent misrepresentation by the successful tenderer, so as to profit from preference points, are plausible. In other words, it is not the existence of conclusive evidence of a fraudulent misrepresentation that should trigger responsive action from an organ of State. It is the awareness of information which, if verified through proper investigation, could potentially expose a fraudulent scheme.”

87. In my view, the underlined words reflect what would also be a sensible and purposive approach towards the duty that must exist to initiate debarment proceedings under section 14 in appropriate

circumstances. I consider that such a duty would arise if the FSP became aware of information about a representative which, if verified following the process envisaged in section 14(3)(a) and (b), could warrant a debarment under section 14(1).

88. This of course does not mean that the merest hint or suspicion of such information existing will trigger the process. Section 14(3)(a) requires the notice to include a statement of an intention to debar as well as the grounds or reasons for the debarment. Those requirements presuppose a reasonable degree of conviction that information exists that may, in the circumstances of the case, warrant a debarment. Every case will have to be judged on its own

facts.

89. Against the background of this legal analysis, I turn to deal with the Applicant’s claims, and more particularly his two-pronged attack on the lawfulness of the Respondent’s initiation of debarment proceedings.

The first ground: contractual compromise

90. The first declaratory order sought by the Applicant is to the effect that the Respondent “compromised whatever right it might have had to initiate debarment proceedings in terms of section 14(3)(a) of the [FAIS Act]”.

91. This amounts to a contention that the initiation of debarment

proceedings was unlawful merely because the Respondent had agreed not to do so as part of the settlement agreement.

92. To succeed in this contention, the Applicant must establish two things:

92.1. first, that as a general proposition an agreement by the Respondent, as an FSP, not to initiate debarment proceedings where it would otherwise have been required to do so is lawful and enforceable by the counterparty; and

92.2. second, if the first proposition is established, that such an agreement was actually entered into.

Can an FSP validly compromise a duty to initiate debarment?

93. It will be apparent from what I have stated above that the

formulation of the Applicant’s prayer, in which the Respondent is described as having a “right” to initiate debarment proceedings under section 14(3)(a), is misplaced.

94. Section 14(1) contains a duty or obligation to debar in appropriate

circumstances, and there is an implicit duty on an FSP to commence debarment proceedings in appropriate circumstances, even if the final outcome is not certain. If that is the case, a notice in terms of section 14(3)(a) must be given.

95. The legal question then arises whether it is competent, in principle, for the FSP to agree not to commence debarment proceedings even where the jurisdictional facts giving rise to the duty are present.

96. In contending that no such agreement would be valid or enforceable,

the Respondent relies on authorities that hold that no-one may renounce a right contrary to law or a right introduced in the public

interest, or through waiver effect something forbidden by statute. The leading case in this regard is *Ritch and Bhyat v Union Government (Minister of Justice)* 1912 AD 719 at 734-5.

97. The present case however does not involve the potential waiver of an accrued right. It involves a potential agreement not to comply with a statutory obligation that would otherwise exist.

98. Whether an agreement to do something prohibited by statute, or not to do something required by statute, or that simply does not comply with statutory requirements, is void or unenforceable depends on the proper interpretation of the statute, having regard to its language, context and purpose.
99. In *Pottie v Kotze* 1954 (3) SA 719 (A) at 726-727, it was stated as follows:
- “The usual reason for holding a prohibited act to be invalid is not the inference of an intention on the part of the legislature to impose a deterrent penalty for which it has not expressly provided, but the fact that recognition of the act by the Court will bring about, or give legal sanction to, the very situation which the Legislature wishes to prevent.”*
100. This concern lay at the centre of the decision of the Constitutional Court in *Cool Ideas* 1186 CC v Hubbard 2014 (4) SA 474 (CC). The Court refused to enforce an arbitration award directing the payment of amounts by a client to an unregistered home builder. The Housing Consumers Protection Measures Act 95 of 1998 prohibits a home builder from receiving consideration from construction of a dwelling where they had failed to register as a home builder. Majiedt AJ (as he then was) for the majority stated as follows (in paragraph [53]):
- “The majority in the Supreme Court of Appeal refused to make the arbitral award an order of court on the basis that to do so would amount to sanctioning an illegality and would subvert the legitimate purpose of the section by lending the court's imprimatur to the very mischief which the statute seeks to prevent. Our law has long recognised that any act performed contrary to the direct and express prohibition of the law is void and of no force and effect. [Schierhout v Minister of Justice 1926 AD 99 at*
109. See also *Hoisain v Town Clerk, Wynberg* 1916 AD 236.] Making the arbitral award an order of court would undoubtedly amount to the court sanctioning the illegality which s 10(1)(b) imposes.”
101. This is consistent with the general principle that even in the context of discretionary powers, a public authority cannot enter into a contract that is wholly incompatible with the discretion conferred upon it (*President of the Republic of South Africa v South African Rugby Football Union* 2000 (1) SA 1 (CC) in paragraph [198]).
102. In applying this to section 14 of the FAIS Act, it is important to keep in mind (as made clear in the dictum from *Financial Services Board v Barthram* quoted above) that the reach of the provision extends beyond the FSP and the representative, and implicates the interests of the general public.
103. An agreement not to debar a person, or not to commence a debarment process, contrary to a duty that otherwise arises under section 14, could leave the representative free to provide services to the public

at large where a proper process may have led to a debarment. For that reason, I am of the view that it is not competent in law for an FSP and a representative to agree that the FSP will not comply with its duty under section 14. To uphold such an agreement would be to sanction unlawful conduct and indirectly to achieve a result that the legislation seeks to prevent.

104. I see no indication in the language, context or purpose of the FAIS Act that warrants a different interpretation.

105. The parties drew my attention to decisions of the Tribunal where the FSP and the debarred representative had entered into a settlement agreement.

106. Decisions of the Tribunal (which, although staffed by lawyers, is not a court of law) are not binding on this Court. However, they may carry some persuasive value.

107. The first decision is *Chaane v NBC Holdings (Pty) Limited*

[2020] ZAFST 75. The FSP had dismissed and debarred two representatives. Later, the employment dispute was settled in the CCMA, on terms that recognised that the employment relationship had terminated on the basis of a voluntary resignation, and that required

the FSP to rescind the dismissal ruling. The representatives then sought a reconsideration of the debarment before the Tribunal. They argued that the basis of their debarment, namely the findings and reasons of the disciplinary body, had fallen away by agreement and hence that the FSP's "jurisdiction to debar them" had fallen away.

108. The Tribunal was not impressed with this argument. It reiterated a prior ruling that FAIS and employment proceedings were distinct from one another. It also repeated what it had said in *Thako v African Bank Limited* (FSP 7/2020), namely that the duties of an FSP are statutorily circumscribed, and that "[t]hese duties cannot be waived or settled especially since, if the debarment were to be set aside by this Tribunal, the matter has to be referred back to the FSP for reconsideration. Once the matter has been settled, the reconsideration process by the FSP will be irreparably compromised. See *South African Cooperative Citrus Exchange Ltd v Director-General Trade and Industry* [1997] ZASCA 6; 1997 (3) SA 236 (SCA.)."

109. The Tribunal went on to say: "An ex post facto agreement ... does not affect the debarment process. At the stage when the applicants were debarred, the [FSP] had the necessary jurisdiction, and jurisdiction once established does not fall away due to subsequent events."

110. The Applicant relied on the above finding to argue that the Tribunal did not appear to take issue with the efficacy of a pre-debarment settlement agreement, only a later one.

111. The facts before the Tribunal did not involve a pre-debarment settlement agreement, and it is not possible to conclude that it would have upheld such an agreement. If anything, the Tribunal's endorsement of the approach in *South African Co-operative Citrus Exchange Limited* ("SA Citus") suggests otherwise.

112. The SA Citrus case was decided on the basis that the Minster was not entitled to waive a statutory time-limit for lodging claims under a compensation scheme, because that limit was imposed in the public interest. Doing so would thwart legitimate state objectives and be contrary to public policy and interest.
113. The reference to SA Citrus in this context tends to indicate that the Tribunal was of the view that the section 14(1) duty cannot be the subject of settlement per se. The concern expressed was that if the matter were sent back to the FSP, its reconsideration would be “irreparably compromised” – which means that the FSP would be precluded from exercising its statutory duty to debar. The Tribunal was clearly not comfortable with such a result.
114. The Applicant also relied on the Tribunal’s decision in *Kholumo v FNB Premier Banking* (FSP48/2022). This was a reconsideration of a debarment that had occurred on 21 April 2021. The basis was dishonesty. The representative had been dismissed as an employee on 15 December 2020. The section 14(3)(a)(i) notice had been sent on 15 February 2021. On 12 March 2021, the parties reached a settlement agreement in terms of which the representative agreed to withdraw his referral for unfair dismissal to the CCMA and the employer accepted his voluntary resignation. There was no admission of liability. Moreover, there was an express reservation of rights to pursue section 14(1) proceedings.
115. The Tribunal held that the debarment process was not “lawful, reasonable or procedurally fair,” as a result of which the reconsideration had to succeed. The main concern was that the representative was debarred for something (i.e. a finding of general dishonesty, lack of integrity and good standing) that had not been put to him in the section 14(3) notice.
116. The Tribunal however went on to say that the grounds to debar when the notice was sent “were no longer valid when the decision to debar the applicant was made. By that time, the parties had entered into a written settlement agreement in which they agreed that the employment relationship was terminated by a voluntary resignation (which means that the applicant was not dismissed) thereby implying that the termination was not as a result of a dismissal; and the respondent accepted that there was a dispute whether the allegations of dishonesty were true. The notice of intention to debar had been overtaken by other events, namely the settlement agreement.”
117. It was further held that the reasonable inference to be drawn from the agreement that termination of employment occurred due to voluntary resignation is that the FSP had accepted that the employment contract terminated for a reason other than misconduct:

“By agreeing that the termination of the contract of employment was the result of voluntary resignation, the respondent effectively agreed that a dismissal for dishonesty was not warranted. In other words, the respondent agreed to the reversal of its finding that the applicant did not meet the requirements of honesty, integrity and good standing. This in our view was tantamount to a finding that the applicant was not dishonest and is a person of integrity and good standing. ... Under these circumstances it is unfair and unreasonable for the respondent to have reverted to its pre-settlement position and find that the applicant is dishonest, lacks integrity and is not of good standing. The

applicant is either dishonest, or he is not. The same conduct cannot be both honest and dishonest.”

118. I do not read this ruling as an endorsement of the notion that a FSP can lawfully agree not to initiate debarment proceedings where it has a statutory obligation to do so. Essentially, the Tribunal concluded that the FSP, in settling the employment dispute on the terms that it did, had itself come to the conclusion that there were no facts

warranting a debarment. It was not the fact of a settlement, but the inferences that could be drawn from its contents regarding the conduct of the representative, that informed the Tribunal's views on whether debarment was warranted on the facts.

119. It follows that I do not find support in the Tribunal decisions referred to for a conclusion that an FSP can in law be bound to an agreement not to commence debarment proceedings where these would otherwise be required.
120. In support of his argument that it was possible in law for an FSP to agree not to pursue debarment proceedings, the Applicant contended that if it were otherwise, the “merest hint” of a reason for debarment would oblige the FSP to commence debarment proceedings. It was argued that there is a necessary area of discretion within which an FSP may legitimately decide not to commence debarment proceedings.
121. In my view, this is to conflate two different issues. I have already indicated that it is not every hint of information that may lead to a possible debarment that triggers the duty, and that every case will

turn on its own facts. The circumstances in which the duty arises may not always be easy to define, and the FSP may be faced with a difficult decision as to whether it must proceed, on pain of possible criminal sanction if it does not.

122. But the fact that a FSP may not in every case have a duty to commence debarment steps does not mean that it can validly be held to an agreement not to do so where otherwise the duty exists.
123. It may be suggested that this conclusion, applied to the present facts, necessarily presupposes that there is information that would trigger the duty to commence debarment proceedings, and that where that is not the case, an agreement not to do so cannot be unlawful on the grounds already discussed. That is of course so. But in the present case, the Applicant is seeking to uphold what he contends to be a contractual “compromise” of any “right [or duty, for the reasons given above] to debar,” which assumes that the proceedings would otherwise have been warranted.
124. That also seems to me to be consistent with the undisputed facts, namely that the Applicant disclosed confidential client information to a third party. Without pre-judging the issue (including whether, on full investigation and having regard to the arguments and explanations that the Applicant may put up, the materiality of this

conduct in the context justifies the sanction of debarment), it does appear that information exists that would, on the approach suggested above, warrant at least the initiation of the process. An agreement not to do so is not competent.

The interpretation of the settlement agreement

125. Having reached the above conclusion, it is unnecessary for me to decide whether the settlement agreement does purport to preclude the Respondent from initiating section 14 proceedings in relation to the disclosure of confidential information to Ms Lategan. Even if that were the case on a proper interpretation of the “full and final settlement” provision, the agreement to that effect would not permit the relief sought.
126. I therefore cannot make the first declaratory order prayed for.

The second ground: alleged ulterior purpose

127. The second basis upon which it is contended that the initiation of debarment proceedings was unlawful, and should therefore be set aside and interdicted, is that this action was taken for an ulterior purpose.
128. I concluded above that the initiation of debarment proceedings does not constitute “administrative action” for purposes of PAJA. Despite that, this step (as an essential step towards possible debarment) still constitutes an exercise of public power. It is therefore subject in principle to judicial scrutiny under the principle of legality.
129. Relying on *Maughan v Zuma* 2023 (5) SA 467 (KZP), the Applicant argues that where a party purports to act in terms of a statutory power, but for an ulterior purpose (such as to oppress or harass), the act is unlawful.
130. The judgment in *Maughan* relates to the general power to prevent an abuse of the judicial process, specifically within the realm of private prosecutions. The Court (in paragraphs [77] and [78]) endorsed judgments stating that the question to be asked was whether the prosecution was instituted or thereafter conducted for some collateral and improper purpose, rather than with the object of having criminal justice done to an offender, or to oppress and harass the accused rather than to secure criminal justice.
131. It is recognised in section 6 of PAJA that a court may review an administrative action *inter alia* if “the action was taken ... for an ulterior purpose or motive”. The same ground may be pursued under legality review.
132. There are various examples of this. In *City of Cape Town v Premier, Western Cape* 2008 (6) SA 345 (C), the establishment of a commission of inquiry was set aside because it was set up for the purpose of embarrassing or discrediting political opponents, without holding the honest belief that it was warranted for any lawful purpose. In *Sex Worker Education and Advocacy Task Force v Minister of Safety and Security* 2009 (6) SA 513 (WCC), it was held that police had been arresting sex workers for the purpose of harassing them rather than for the lawful purpose of having them prosecuted. That conduct was successfully reviewed on that

ground.

133. The requirement that an FSP not use section 14 proceedings for ulterior reasons is reflected in paragraph 3.5.1 of the FSCA Guidance Note on the Debarment Process published on 6 June 2019 in terms of section 141 of the FSRA. This states that the debarment process “should not be used by FSP’s to satisfy contractual or other grievances” and “should not be abused for ulterior purposes”.
134. The Tribunal in *Howard v S A Health Brokers (Pty) Limited* (FSP49/2023) reiterated that the debarment process should not be used to settle contractual disputes or for ulterior purposes. In that case, it was held that the proceedings had been used in furtherance of a contractual dispute (apparently involving ownership of shares in the FSP) “rather than on genuine grounds related to questions of honesty and integrity”.
135. The Applicant’s contention is that the decision to initiate debarment proceedings was taken for the ulterior motive of “preventing the Applicant from operating in competition with it and to obstruct the Applicant from rendering financial advice to his clients and, indeed, for the purpose of sterilising significant parts of the settlement agreement”. The implication is that the decision was not taken on genuine grounds related to questions of the honesty or integrity of the Applicant, or because there was a concern about a material breach of an obligation of the Applicant under the code of conduct.
136. The case put up by the Respondent in its answering affidavit is essentially that its purpose in launching the debarment proceedings was to comply with its statutory obligations. It avers that the Applicant’s conduct in sharing the client list with Ms Lategan was serious and fell outside even the alleged rationale of determining a “buy-out” price for friends and family. It states that it faces potentially severe statutory penalties if it fails to comply with its obligations, and that “the respondent had no alternative but to institute debarment proceedings in the face of the admitted disclosure of confidential client information”.
137. The Respondent goes on to say that the contention that it is trying to stop the Applicant from competing with it “makes no sense. The respondent secured suitable restraint undertakings from the applicant which are embodied in the settlement agreement. It had no need for any additional restraint. ... The 21 clients with whom the applicant was permitted to deal were essentially close friends and family who, in all likelihood, would not have remained with the respondent in any event.”
138. Thus, in the face of the contention that the institution of debarment proceedings was aimed at protecting the Respondent from competition, as opposed to pursuing a legitimate objective consistent with the purposes of the FAIS Act, the Respondent has stated on oath that it did so because it considered that it was statutorily obliged to do so

because of the seriousness of the Applicant’s conduct, and that it had no need for additional restraints over and above what it had secured, because it was in any event not likely to keep the clients whom it had relinquished.

139. An averment of ulterior purpose goes to the state of mind and motivations of the Respondent. The Applicant's averment is based on inferences drawn from the fact of the conclusion of the settlement agreement and the timing of the section 14(3)(a) notice, which was delivered the very next day, and without warning prior to the settlement agreement being entered into. In response,

the Respondent has stated on oath that its purpose was to comply with its legal duties, and has provided argumentative support for this.

140. There is certainly room for doubt as to whether the Respondent's conduct was exclusively or even primarily motivated by its understanding that it was compelled by law to do so (and thus that its motive was to protect itself against adverse consequences), rather than by a desire to quell competition. The fact that it waited until it had "locked in" a restraint agreement before it acted is not insignificant, as it seems highly unlikely that either party would have agreed on those terms once a debarment process had commenced and was proceeding. Moreover, the parties had only agreed a 6-month restraint in respect of the Respondent's general client base, whereas a debarment would presumably remove the Applicant from the market for considerably longer. A debarment would therefore benefit the Respondent from the perspective of limiting competition.

141. Moreover, the terms of the settlement agreement, which expressly authorise the Applicant to provide financial services to 21 named clients, seem inconsistent (on the face of it) with a view that the Applicant's conduct is such as to disqualify him from acting as a representative entirely.

142. The difficulty for the Applicant is however that having sought final relief on motion, he has to establish his case on the Respondent's version, unless he can show that that version is so clearly untenable, palpably implausible or far-fetched to warrant its rejection on the papers alone. As the cases indicate, that is a high hurdle to overcome: for example, in *African National Congress v Ezulweni Investments (Pty) Limited* [2023] ZASCA 159 in paragraph [23], the appellant's version was rejected because it was "utterly untenable and without veracity" and "not capable of belief".

143. Despite my concerns as expressed above, I do not think that I can safely reject the Respondent's statements as to its purpose and motivation on the papers alone. The Applicant's conduct in disclosing a client list with sensitive information to a third party is, again without prejudging any aspect, not insignificant. The fact that the majority of the clients on the list were not family and friends, and so could not have been those whom the Applicant may have wanted to "buy", raises some questions about the Applicant's explanation for his conduct. In light of these facts, it is not unreasonable for an FSP in the position of the Respondent to be concerned about being found to have acted unlawfully by not proceeding under section 14. It is also not inherently improbable that it was this concern, rather than a desire to curb competition, that motivated its decision to initiate such proceedings despite a restraint settlement having been reached.

144. The contention that the Respondent was motivated by ulterior purposes of self-interest rather than a bona fide concern that a debarment offence had occurred is something that can and should be fully ventilated in the section 14(3) process. The Respondent's undertaking to appoint an independent third party to make the decision ought to give some comfort that the issue will be properly considered. Moreover, if there is a debarment, the question can be referred to the Tribunal for reconsideration, and the same issue can again be tested. In this context, I have little doubt that, as was the case in Kholumo, the nature and content of the settlement agreement entered into a day before the FAIS notice was sent, and the inferences that can be drawn from this as to the materiality of the Applicant's conduct, will be important factors in making the final determination as to whether there was an ulterior motive in pursuing the debarment.
145. The issues raised in the supplementary founding and answering affidavits may also play a role in the ultimate decision. The Applicant refers to a recent case where the Respondent successfully restrained certain of its erstwhile financial managers from competing with it, in circumstances where they had disclosed confidential client information to a former employee. He contends that the Respondent has not commenced debarment proceedings against them, and uses this as a basis to justify the allegation that the proceedings against him were instituted for ulterior purposes in the absence of a restraint. The Respondent denies this and says that it will debar the managers if so advised by its attorneys, which advice is awaited. I

do not think that anything conclusive can be gleaned from this set of facts at present. There may be a firmer factual basis for drawing inferences of motive by the time any decision in the Applicant's matter is taken.

146. What primarily weighs with me is that, given the public interest purpose of section 14, this Court should not be quick to shut down debarment proceedings on the basis of alleged ulterior motive, except in the very clearest of cases. Where there is doubt, it is generally preferable to have the point tested through the statutory

structures and processes.

147. I am therefore not inclined to grant the second declaratory order on the papers.

Other requirements for an interdict

148. Given the conclusions I have reached above, the Applicant has not established a clear right to the relief sought. Accordingly, it is unnecessary for me to address the other requirements for a final interdict as prayed for.

Costs

149. Finally, there are two aspects pertaining to costs.

150. The first is the costs of the present application (Part B). The second is the costs of Part A which, as per the order of Van Heerden AJ, stood over for determination together with Part B.
151. The Applicant has been unsuccessful in Part B. I see no reason why the costs should not follow the result.
152. At the same time, the Applicant was successful in obtaining an interim order under Part A. The Respondent could have obviated the need for urgent interim relief by undertaking to suspend the debarment process pending the outcome of the main proceedings. It was not unreasonable for the Applicant to move to protect his position in the interim. I therefore find that the Applicant should be entitled to the costs of the Part A proceedings.
153. Essentially the same papers served before this Court in relation to Parts A and B. I would think it fair that 50% of the costs incurred in drawing and settling the papers that were filed before the order

under Part A should be attributable to Part A, and 50% to Part B.

154. In neither case do I think that the conduct of the parties, or the circumstances giving rise to the dispute, warrant an order for costs on anything other than the party and party scale.
155. Given the legal and factual complexities of the matter, I am satisfied that it was reasonable to engage two counsel where this was done, and that the costs of senior counsel may be taxed on Scale C under Rule 69(7).

ORDER

156. In the premises, I make the following order:

156.1. The Applicant's application under Part B is dismissed.

156.2. The Applicant is liable for the Respondent's costs pertaining to Part B, including the costs of two counsel, senior counsel's costs to be taxed on Scale C.

156.3. The Respondent is liable for the Applicant's costs pertaining to Part A, including the costs of counsel to be taxed on Scale C.

156.4. The costs incurred in drawing up the affidavits filed in the proceedings up until the hearing of Part A are to be attributed 50% to Part A and 50% to Part B.

M W JANISCH

Acting Judge of the High Court

Western Cape Division

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Date of hearing:

31 October 2024

Date of judgment:

15 November 2024 (electronically)

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