



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: A328/2023

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: ...! OCTOBER 2025

SIGNATURE

In the matter between:

PRUDENTIAL AUTHORITY

Appellant

and

AHJEETH DHRUPLAL JAIJAI

First Respondent

FINANCIAL SERVICES TRIBUNAL

Second Respondent

Summary: *Appeal of a decision by the Financial Services Tribunal (FST), Jurisdiction of the Prudential Authority (PA) – Employer/employee dispute falling outside the jurisdiction of the PA. Even if such a dispute involves a financial institution, it does not engage financial*

sector law. Position confirmed by the FST. A review of the FST's view and a remittal by the court of first instance reversed on appeal.

ORDER

1. The appeal is upheld with costs, including the costs of two counsel, where employed.
2. The order of the court a quo is replaced with the following:

“The application is dismissed with costs, including the costs of two counsel, where employed”.

JUDGMENT

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading the electronic file of this matter on Caselines. The date of handing-down is deemed to be 1 October 2025.

DAVIS, J (Bam J et Mooki J concurring)

Introduction

[1] The applicant in the main application was an erstwhile employee of Investec Bank Ltd (Investec). After his resignation in 2014, he referred his perceived prejudicial treatment by Investec to the Prudential Authority (the PA) in 2019 as a disclosure in terms of the Protected Disclosures Act¹ (the PDA).

[2] The PA found that the applicant's referral did not trigger a financial sector law and as such did not engage the PA's jurisdiction. Accordingly, the PA declined to take a decision on the referral. Aggrieved with this view, the applicant turned to the Financial Services Tribunal (the FST) for a reconsideration of the decision by the PA.

[3] The FST in turn, confirmed the view that the PA's jurisdiction was not engaged and refused the reconsideration application.

[4] The applicant then turned to this court. Sardiwalla J, sitting as the court of first instance, found for the applicant and remitted his reconsideration application to the FST.

[5] On appeal, the PA again contended that its jurisdiction was never engaged by the applicant's referral and that any reconsideration thereof by the FST would not be permissible in law.

[6] The PA was the appellant before us and the initial applicant was the first respondent. The FST was the second respondent. The parties shall, for the sake of convenience, be referred to as in this introduction. The FST did not participate in this appeal.

¹ 26 of 2000.

The applicant's case

[7] In his founding affidavit in the main application (for the review of the FST's "decision"), the applicant stated that he had resigned his employment at Investec in 2014 "... due to what I believed to be material misrepresentations about my performance, financial prejudice against me in the 2013/2014 financial year concerning the awarding of bonuses and concerns about preferential treatment of white male employees at Investec. I considered the treatment that I was subjected to by employees and directors of Investec during this time as unfair, discriminatory and a violation of my human dignity"².

[8] Three years after his resignation, the applicant submitted his complaint to the Remuneration Committee and the Social and Ethics Committee of Investec's Board. Following extensive engagement and an unsuccessful mediation attempt, the applicant's complaints were dismissed in December 2018.

[9] A year later, on 10 December 2019, the applicant lodged his referral with the PA. He claimed to do so as a protective disclosure³. This "disclosure" is, by the applicant's own admission, voluminous.

[10] After extensive exchange of correspondence and investigation, the PA on 4 March 2021 responded as follows:

"The PA's primary mandate is to promote and enhance the safety and soundness of financial institutions. The PA's approach to supervision is risk-based, and as such, it focuses resources in areas which pose the greatest risk to the achievement of the PA's objectives as well as to the safety and soundness of the financial

² Paras 14 and 15 of the Founding Affidavit.

³ As contemplated in section 8 of the PDA.

system in its entirety. Furthermore, ongoing supervision includes monitoring licenced financial institutions' adherence to financial sector laws and related prudential requirements. In this instance the requirements contained in the Banks Act 94 of 1990 (the Banks Act) and the Regulations relating to Banks (the regulations) are particularly relevant.

The PA has duly considered the contents of your disclosure under reference and, cognisant of the ambit of the above-mentioned mandate and supervisory approach, thoroughly assessed all allegations raised in the disclosure documentation that fall within the PA's ambit of responsibilities as prudential supervisor. In this regard, the PA did not identify any matters of concern nor any reasons to believe that Investec Bank Limited (Investec) contravened or transgressed the provisions of the Banks Act and the Regulations. Accordingly, the PA cannot be of any further assistance to you and, from the PA's perspective, the matter is regarded as finalized".

[11] The applicant considered the above response to be without sufficient reasons and asked for same. Upon not receiving a response satisfactory to the applicant, save for referrals to the relevant statutory position, including that of the Reserve Bank, the applicant turned to the FST for a reconsideration of the "decision" by the PA.

[12] The FST was of the view that the PA had not taken a "decision" as contemplated in section 218 of the Financial Sector Regulation Act⁴ (the FSRA)

⁴ 9 of 2017.

and summarily dismissed the reconsideration application for being frivolous and without merit.

[13] The applicant turned to the court *a quo* on 22 September 2022 and on 17 August 2023 Sardiwalla J reviewed the FST's "decision" and remitted the matter to the FST. The PA and the FST were also ordered to pay the costs of the review application.

The statutory framework

[14] It is apposite to have regard to the statutory framework before considering the positions taken by the PA and the FST, particularly in view of the fact that their views are that their jurisdiction was never engaged.

[15] The PA is a creature of statute, established in terms of section 32(1) of the FSRA. It is a juristic person operating within the administration of the South African Reserve Bank as a financial sector regulator. The objectives of the PA, set forth in the FSRA, are to:

- promote and enhance the safety and soundness of financial institutions that provide financial products and securities services;
- promote and enhance the safety and soundness of market infrastructures;
- protect financial customers against the risk that those financial institutions may fail to meet their obligations; and
- assist in maintaining financial stability.

[16] Section 34 of the FSRA sets out the functions of the PA and provides as follows:

“Functions

34 (1) In order to achieve its objective, the Prudential Authority must:-

- (a) regulate and supervise, in accordance with the financial sector laws:-*
 - (i) financial institutions that provide financial products or securities services; and*
 - (ii) market infrastructures;*
- (b) co-operate with and assist the Reserve Bank, the Financial Stability Oversight Committee, the Financial Sector Conduct Authority, the National Credit Regulator and the Financial Intelligence Sector, as required in terms of this Act;*
- (c) co-operate with the Council for Medical Schemes in the handling of matters of mutual interest;*
- (d) support sustainable competition in the provision of financial products and financial services, including through co-operating and collaborating with the Competition Commission;*
- (e) support financial inclusion;*

- (f) *regularly review the perimeter and scope of financial sector regulation, and take steps to mitigate risks identified to the achievement of its objective or the effective performance of its functions; and*
 - (g) *conduct and publish research relevant to its objective.*
- (2) *The Prudential Authority must also perform any other function conferred on it in terms of any other provision of this Act or other legislation.*
- (3) *The Prudential Authority may do anything else reasonably necessary to achieve its objective, including;-*
 - (a) *co-operating with its counterparts in other jurisdictions; and*
 - (b) *participating in relevant international regulatory, supervisory, financial stability and standard setting bodies.*
- (4) *When performing its functions, the Prudential Authority must:-*
 - (a) *take into account the need for a primarily pre-emptive, outcomes focussed and risk-based approach, and prioritise the use of its resources in accordance with the significance of risks to the achievement of its objective; and*

(b) to the extent practicable, have regard to international regulatory and supervisory standards set by bodies referred to in subsection (3)(b), and circumstances in the Republic.

(5) The Prudential Authority must perform its functions without fear, favour or prejudice”.

[17] The Banks Act is one of the financial sector laws in accordance with which the PA has to regulate and supervise financial institutions (as referred to in par [10] above). Beyond the Banks Act, the PA is, in terms of the PDA, read with the PD Regulations, given an additional mandate to deal with protected disclosures.

[18] The PDA provides in section 8 thereof that a disclosure that is made in good faith to a person or body and in respect of which an employee reasonably believes that the relevant impropriety falls within any of the descriptions of matters which, in the ordinary course, are dealt with by such a body, is a protected disclosure.

[19] The persons to whom protective disclosures are made, are also statutorily regulated. In terms of regulation 2(1) of the Regulations Relating to Protected Disclosures, 2018, read with annexure “A” thereto, the PA together with the Financial Sector Conduct Authority, may receive and investigate irregular or improper conduct or impropriety with regard to financial institutions and the provision of financial services.

[20] There is also an additional responsibility of the PA which emanates from its role as a supervisory body in terms of the Financial Intelligence Centre Act 38 of 2001 where it has a mandate limited to the receipt and investigation of

disclosures into alleged irregular or improper conduct or impropriety with regard to money-laundering activities or the financing of terrorist and related activities.

[21] What constitutes a “decision” by the PA in relation to any of its responsibilities, is prescribed by the definition thereof in section 218 of the FSRA, which provides as follows:

“218. For purposes of this Chapter- "decision" means each of the following:

- (a) a decision by a financial sector regulator or the Ombud Council in terms of a financial sector law in relation to a specific person;*
- (b) a decision by an authorised financial services provider, as defined in section 1 of the Financial Advisory and Intermediary Services Act, in terms of section 14 of that Act in relation to a specific person;*
- (c) a decision in relation to a specific person by a market infrastructure, being a decision in terms of rules of the market infrastructure contemplated by the Financial Markets Act, or a decision contemplated in section 105 of the Financial Markets Act;*
- (d) a decision of a statutory ombud in terms of a financial sector law in relation to a specific complaint by a person;*
- (e) a decision of a kind prescribed by Regulation for the purposes of this paragraph,*

and includes:-

- (f) an omission to take such a decision within the period prescribed or specified in a financial sector law, rules, or other requirements pertaining to the decision-maker;*
- (g) an omission to take such a decision within a reasonable period, if the applicable financial sector law, or rules of, or other requirements pertaining to, the decision-maker require the decision to be taken but without prescribing or specifying a period;*
- (h) an action taken as a result of such a decision; and*
- (i) an omission to take action as a result of such a decision within the prescribed or reasonable period, if the applicable financial sector law requires the action to be taken but does not prescribe a period”.*

[22] Section 230 of the FSRA provides for reconsideration by the FST of decisions taken by various bodies. A reconsideration of a decision in terms of Part 4 of the FSRA constitutes an internal remedy as contemplated in section 7(2) of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”).

The position of the PA and the FST

[23] The FST did not file any papers in the court proceedings. The Deputy Governor of the Reserve Bank deposed to the answering affidavit on behalf of the PA. He was also the Chief Executive Officer of the PA until 31 March 2022.

[24] He stated the PA's principal contention as being that the applicant's referral to the PA did not fall within a financial sector law. The PA, accordingly, could not, and did not, take a "decision" in terms of such law.

[25] In order to illustrate why the applicant's referral fell outside financial sector law; the Deputy Governor dealt with the referral and the "disclosure" as follows:

"25. It is clear from the founding affidavit that the primary complaint that precipitated the Disclosure and the review application, is one that is born of a labour-related dispute with Mr Jaijai's erstwhile employer, Investec. The founding affidavit that Mr Jaijai has deposed to, is replete with references to discriminatory and/or unfair labour practices that were in his view, perpetuated against him by Investec. The founding affidavit indicates that-

25.1. he resigned from Investec in 2014 due to what he believed to be material misrepresentations about his performance, financial prejudice against him in the 2012/2013 financial year concerning the award of bonuses and concerns about preferential treatment of white males employed at Investec;

25.2. he considered the treatment that he was subjected to by employees and directors at Investec during his time as unfair, discriminatory and a violation of his human dignity;

25.3. in 2017 (being approximately 3 years after his resignation from Investec) Mr Jaijai submitted a referral to the Chairs of the SEC and the remuneration committee as he

remained aggrieved by the circumstances which led to his resignation, and the unfair discrimination and undignified way in which he was treated;

25.4. the referral to the SEC detailed his grievances and he requested that the remuneration committee and the SEC investigate non-compliance with Investec's remuneration policy, breaches of the Companies Act (particularly in what Mr Jaijai considered to be fraudulent conduct) and preferential treatment of white male employees.

26. Pursuant to the latter referral process by Mr Jaijai, where various statements and documents were exchanged, the SEC in December 2018 resolved to dismiss the referral and take no further action.

27. According to Mr Jaijai, the directors and senior executives at Investec, inter alia:

27.1. failed in their fiduciary duties;

27.2. failed to act in good faith and for a proper purpose;

27.3. engaged in conduct that was unethical, untransparent and potentially constituted fraud;

27.4. failed to act in accordance with the remuneration policy and the Investec employee integrity policy;

27.5. failed to provide reasons for the decision in conducting the referral process and by resolving to dismiss and take no further action.

28. On 10 December 2019, Mr Jaijai submitted a protected disclosure in terms of the PDA to the PA. Mr Jaijai makes the following allegations against Investec:

28.1. he details material contraventions relating to, inter alia, corporate governance (remuneration) under the Banks Act and its Regulations, together with contraventions under the Companies Act (paragraph 1.2);

28.2. he, on 29 September 2017, submitted a referral requesting, inter alia, allegations pertaining to non-compliance with the Investec remuneration policy and the crime of fraud under the Companies Act to be investigated (paragraph 1.4);

28.3. as a secondary matter, the referral "requested that in relation to discriminatory treatment of Black professionals, a process be initiated in terms of which a panel comprising credible non-Investec associated persons be established to investigate such discriminatory claims and patriarchy in the form of White Male Privilege and Entitlement" (paragraph 1.5)

28.4. during the process of mediation with Investec, he indicated that the resolution he required was for "the impairment to his dignity to be remedied" paragraph 1.11);

28.5. *the purpose of the Disclosure is to raise, inter alia, contraventions of the Banks Act and Regulations thereto, the Companies Act and the PDA in relation to section 3(b)(iv) thereof (paragraph 1.14);*

28.6. *a consequence of the aforementioned contraventions "was the impairment of Jaijai's dignity, loss of earnings and future Investec-related earnings. However, notwithstanding the aforegoing, Jaijai did not seek a cash settlement but sought a solution to solve for the impairment to his dignity" (paragraph 1.15).*

29. *It is thus evident that Mr Jaijai's referral and aforementioned complaints which resulted in the Disclosure culminated in him being denied a bonus by Investec which, according to Mr Jaijai, was due to factors that were taken into account by Investec which were outside of the remuneration policy.*

30. *His complaint does not fall within the ambit of a financial sector law defined in the FSRA, and it is not one contemplated under the PD Regulations for the PA to investigate.*

The jurisdiction point raised by the PA

31. *It is also evident, from a consideration of the Disclosure as a whole, that Mr Jaijai mistakenly considers what is primarily an employment-related dispute related to unfairness and/or discrimination, as constituting contraventions of numerous provisions of financial sector and other laws and being within the ambit of the PA.*

32. *The Labour Relations Act, No. 66 of 1995 ("the LRA") provides that one of its objectives is to promote the effective resolution of labour disputes. It further provides for procedures for the resolution of unfair labour practices. This is one of the avenues that Mr Jaijai could have pursued in reporting the discrimination which is essentially the nexus of his Disclosure.*

33. *As indicated above, the PA's primary objective is to, inter alia, assist in maintaining financial stability and ensuring that financial customers are protected against the risk that financial institutions may fail to meet their obligations".*

[26] After the PA had disclosed the above stance to the complainant, he requested reasons for the PA's decision. The PA, through its attorneys, thereupon informed the applicant that it had not taken a "decision" and therefore cannot give reasons for such a purported decision. A "decision" is one taken in terms of the financial sector law as contemplated in section 218 of the FSRA, and this had not taken place.

[27] When the matter was referred to the FST for a reconsideration of the purported decision, the applicant was informed that the FST's position was the following:

"More particularly, in terms of section 218 of the FSRA, a "decision" which is subject to the jurisdiction of this Tribunal in terms of section 230 of the FSRA is "a decision by a financial sector regulator ... in terms of a financial sector law in relation to a specific person". The PA took no decision in terms of any financial sector law and the PDA, pursuant to which the Disclosure was made, is not a financial sector law. For the sake of completeness we advise that

the Banks Act 94 of 1990 (which is financial sector law) did not require any decision to be taken, does not provide for any decision in relation to such Disclosure, and no decision was taken by the PA, in this regard”.

Evaluation

[28] The starting point in determining whether the applicant has made out a case for the relief sought, is to have regard to the notice of motion in the main (review) application. Therein, the applicant sought to attack the “decision” of the FST.

[29] In his supplementary affidavit, delivered after receipt of the record, the applicant confirmed this as follows: “*my main objective in bringing these proceedings is to challenge the decision by the first respondent [the FST] and ultimately cause it to re-adjudicate the application for reconsideration*”⁵.

[30] The applicant’s argument in respect of the FST decision, is that it is procedurally flawed (on the basis of only having been taken by the deputy chairperson, Mr Justice LTC Harms (retired) and not the full panel and that he had neither been afforded an oral hearing or sufficient reasons). The applicant then argues that a review would be warranted even where “*... a mandatory or jurisdictional requirement had not been met*”⁶.

[31] In addition to his procedural attack, the applicant alleges that the FST committed a material error of law. He argued that it was arbitrary, irrational and unreasonable for the FST to have *mero motu* decided on its jurisdiction and to thereafter summarily dismiss the application for reconsideration.

⁵ Par 11 of the Supplementary Affidavit, Caselines 06-5

⁶ Par 15.1.1 of the Supplementary Affidavit, Caselines 06-5.

[32] The applicant expressly disavowed any attack on what he alleged constituted the decision by the PA, which he had referred to the FST.

[33] The determinative issue is therefore the jurisdiction of the FST.

[34] The FST has the authority to reconsider decisions of the PA. It derives this power from section 230 of the FSRA. It is a creature of statute and cannot function outside the powers allocated to it by statute. This much is clear.

[35] The decisions which the enabling statute empowers the FST to reconsider in respect of those made by the PA, are prescribed in section 218(a) of the FSRA. Even in circumstances where a decision relates to a “...*specific person* ...”, this subsection limits decisions to those made “... *in terms of a financial sector law*”.

[36] The complaints made by the applicant to the PA about his relationship with Investec, were not made in terms of a “financial sector law” and the PA therefore declined to take a decision in respect thereof.

[37] Once there was an absence of a decision by the PA, then section 230 of the FSRA is not engaged and the FST lacked authority to reconsider any purported decision.

[38] It follows that the remittal ordered by Sardiwalla J to the FST, would be a *brutum fulmen* and, to expect a reconsideration from the FST, would be *ultra vires* the enabling statute. For this reason alone, the order given by the court a quo should not have been granted.

[39] Once the above conclusion has been reached, it illustrates the fallacy of the applicant’s reliance on alleged procedural unfairness. If a decision-making body lacks jurisdiction to perform a function, then referring the same question back to such a body would be non-sensical, irrespective of whether there may have been

procedural deficiencies in how the question came before or was even handled by the said body.

[40] For the reasons set out above, the appeal should succeed. In view hereof, it is not necessary for us to decide the plethora of ancillary, but non-determinative issues raised in the papers.

[41] Lastly, we find no reason why the customary rule that costs follow the outcome, should not apply.

Order

[42] Accordingly, the order is as follows:

1. The appeal is upheld, with costs, including the costs of two counsel, where employed.
2. The order of the court a quo is replaced with the following:

“The application is dismissed with costs, including the costs of two counsel, where employed”.


UNDAVIS
Judge of the High Court
Gauteng Division, Pretoria

I agree


N BAM
 Judge of the High Court
 Gauteng Division, Pretoria

I agree


O MOOKI
 Judge of the High Court
 Gauteng Division, Pretoria

Date of Hearing: 13 August 2025

Judgment delivered: 1 October 2025

APPEARANCES:

For the Appellant:	Adv M Majozi
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For the First Respondent:	Mr M Power
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