IN THE EQUALITY COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case number: EC14/2024

In the matter between:

DAVID JEFFREY LOTTERIE	**First Complainant**
LOTTERIE HOLDINGS PTY (LTD)	**Second Complainant**
And	
FINANCIAL SECTOR CONDUCT AUTHORITY	**Respondent**

Coram:	**Pangarker, J**
Hearing date:	**10 February 2026**
Judgment delivered:	**16 February 2026 (electronically)**

JUDGMENT

PANGARKER J

[1] On 18 November 2024, the complainants instituted proceedings in terms of section 20 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA)

against the respondent seeking the following relief:

1.1 Reinstatement of the FSP license in respect of the second complainant (the company);

1.2 The issuing of an unconditional apology to the complainants; and

1.3 The payment of damages of R10 million for reputational defamation and economic hardship.

[2] The complaint was opposed and after various attempts by the first complainant, who is the director of the company, to change and expand upon the relief as per the Form 2, all of which were dismissed prior to the hearing of the main complaint, the complaint was eventually heard.

[3] The nature of the complaint may be distilled as follows, having regard to Part E of Form 2 completed by the first complainant:

3.1 The complainants rely on a statement made by President Cyril Ramaphosa in Cape Town on 11 July 2021 on the progress in the national effort to contain the COVID-19 pandemic, wherein he stated as follows:

> *"In addition, Cabinet has decided that all business licenses and permits that expired between March 2020 and June 2021 will remain valid until 31 December 2022.*
>
> *New business licenses or permits that are issued from the 1st of July will also be valid until 31 December 2022, and no license fee will be payable.*

This will provide some relief to small businesses."

3.2 According to the complainants, the President's speech forms the basis for their complaint of unfair discrimination which they allege was committed by the respondent, the FSCA.

3.3 The Chairperson of the Portfolio Committee on Small Business Development welcomed a Cabinet decision regarding licenses and permits that expired during this period.

3.4 The decision was published in the Government Gazette in GN 615 of 2021.

3.5 In view of the Presidential pardon, as described above, the company could not and did not pay its levy related to its license as a financial service provider (FSP) and consequently, the FSCA withdrew such license in 2021, and this despite the Presidential pardon.

[4] The first complainant alleged that the effect of the withdrawal of the company's FSP license was that it created economic hardship for both complainants. This had a knock-on effect in that, as a micro-lender, the withdrawal of the license had a negative effect on the business in that service providers commenced litigation against the company, which could not trade. Additionally, the complainants were defamed, and judgments and civil proceedings followed.

[5] From annexures attached to the complaint it was evident that the complainants also rely on Directives issued by the Minister of Small Business Development published in the Government Gazette No. 44853, Notice no. 615 of 15 July 2021 in support of their allegation of unfair discrimination[1]. The record also indicates that the withdrawal of its FSP license was reported to the office of the Public Protector, wherein the first complainant alleged that as a coloured male, he was marginalized based on his racial classification. This averment was not

[1] Form 3

alleged in the formal complaint with the clerk of this Court.

[6] Having regard to the affidavits filed, there was no dispute that the FSCA is the regulatory and supervisory body overseeing the conduct of financial institutions in accordance with the laws governing the financial sector, more specifically, the Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act).

[7] The FSCA came into existence on 1 April 2018 and took over the functions performed by its predecessor, the Financial Services Board (FSB). In terms of section 15A of the Financial Services Board Act 97 of 1990 (FSB Act), the company, as a financial service provider, was obliged to pay levies to the FSCA. By 24 February 2021, the company had failed to pay such prescribed levies.

[8] In terms of section 9(1)(d) of the FAIS Act, the FSCA may at any time suspend or withdraw any license if satisfied that the licensee has failed to pay a levy, administration penalty or any interest in respect thereof. There was no dispute that the company was the licensee.

[9] On 24 February 2021, the FSCA notified the complainants of its intention to suspend the company's license to act as a FSP on grounds that the latter failed to comply with the FAIS Act and as licensee, had failed to pay the obligatory levy and interest. The correspondence informed the complainants in clear, detailed fashion, of the FSCA's intention and the consequences in the event of suspension of the license. Additionally, the first complainant was afforded time to respond and provide reasons why the company's license should not be suspended.

[10] The first complainant failed to respond within the allocated time frame and so on 12 March 2021, after expiration of the period to respond, the complainants were informed in

writing[2] that the FSCA had decided to suspend the company's license. Once again, the details of the consequences of suspension and that the licensee could apply to have the FSCA's decision reconsidered within 30 days after being notified of the suspension decision, were explained in correspondence addressed to the first complainant.

[11] The complainants were also informed that the suspension may be lifted at any time prior to the FSCA's withdrawal of the license provided that the outstanding levies were paid. Furthermore, they were afforded an opportunity until June 2021 to provide reasons why the withdrawal of the license should not be effected.

[12] Rather than complying with the time periods and paying the outstanding levy, the first complainant only responded on 12 July 2021 per email, wherein he informed the FSCA as follows:

> *"Good Morning*
>
> *Last night the President of the Republic of South Africa Cyril Ramaphosa made an important announcement relating to Business license and that we should be given till December 2021. It is on this basis that I am applying that the suspension on FSP 46010 for LOTTERIE HOLDINGS to be lifted as per the guideline.*
>
> *Please advise?"*

[13] In response, the FSCA informed the first complainant that the President's address did not relate to FSPs but rather to businesses whose licenses were renewable, such as restaurants. The first complainant proceeded to address correspondence to the Presidency enquiring whether the FSCA was to comply with his Directives in accordance with his July

[2] Annexure KD2

2021 speech. According to the record in this matter, there was no response forthcoming from the President's office but notwithstanding this and the FSCA's notification that the speech/Directives did not apply to FSPs, the first complainant was undeterred: he insisted in his further correspondence that no businesses were excluded in the Presidential pardon, as he referred to it.

[14] The FSCA's stance remained unchanged that the announcement on the extension of business licenses did not apply to FSPs. In its attempt to shed further light on the issue, the FSCA also referred the first complainant to the Directives issued by the Minister of Small Business Development on 12 July 2021, read with Schedule 1 of the Businesses Act 71 of 1991, which was published in Government Gazette No. 44853, Notice no. 615 of 15 July 2021, which read as follows:

> *"I, Hon. Khumbudzo Ntshaveni, MP, the Minister of Small Business Development, … hereby issue the Directives set out in the Schedule hereto in order to provide direction on the operation of businesses whose licenses and trade permits as per the Businesses Act. no 71 of 1991, as amended, have lapsed and are due for renewal; and due to the prevailing lockdown regulations are unable to renew their licences; extension is hereby granted to such affected business licences and trade permits, allowing businesses to operate despite the business licences and/or trade permits having expired.*
>
> …"

[15] In referring the first complainant to the Directives and legislation, the FSCA pointed out that FSPs do not fall in the category of *"business"* as defined in the Minister's Directives as the attached Schedule defined *"business"* as *"any business that is required to acquire a license or permit and is listed in Schedule 1 of the Businesses Act no. 71 of 1991."*[3]

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[3] Schedule to GG 44853, Notice no. 615 of 15 July 2021

[16] Needless to say, the first complainant was unconvinced. According to him, the President's speech referred to <u>all businesses</u> which included FSPs and thus, the company's license was extended to December 2022. The FSCA noted the disagreement and, quite patiently and respectfully in my view, reminded the first complainant of its objectives and functions in terms of the FAIS legislation and indicated that it would, in the circumstances, proceed with its necessary regulatory functioning in respect of the company's FSP license[4].

[17] Thus, on 2 September 2021, the FSCA informed the first complainant that it withdrew the company's license as FSP on the basis that it had failed to pay its levy which was outstanding in the sum of R6153.82 at that time. He was informed that the FSCA's decision to withdraw the company's FSP license could be reconsidered by the Financial Services Tribunal in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 (FSR Act), yet despite his oral submission that he had done so, the record contains no indication/proof that the issue was referred for reconsideration by the Tribunal.

[18] I was thus more inclined to accept the FSCA's submission that the complainants had not exhausted this internal administrative remedy. In any event, the first complainant's replying affidavit simply stated that the internal remedy was impractical and that the Tribunal *"lacks jurisdiction to adjudicate"*[5]. No basis was laid for such bald assertion.

[19] According to the Form 2 complaint, the complainants allege unfair discrimination and rely upon the President's July 2021 speech that all business licenses were extended to the end of December 2022, and that the extension or pardon included the company. However, in the first complainant's replying affidavit, he alleged for the first time that: a legitimate

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[4] In earlier correspondence to the first complainant, the FSCA provided a copy of the Directives and Schedule 1 to the Businesses Act. The Directives were attached in support of the complainants' Form 2.

[5] Replying affidavit, record p104

expectation was created by the President's address; the FSCA's refusal to comply with the pardon constituted unreasonable administrative action in terms of section 6(2)(h) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA); and, that the FSCA's selective enforcement disproportionately harmed a small black-owned FSP like the second complainant and that this action violated section 9(3) of the Constitution.

[20] None of these averments, grounds or allegations were contained in the 2024 complaint filed with the clerk of this Court. To add, in at least three subsequent and irregular documents filed, the first complainant attempted to expand on the nature and relief of the complaint, including the introduction of approximately twenty additional orders or relief he wished the Court to grant in terms of PEPUDA. As alluded to above, after hearing submissions from the first complainant and the FSCA's counsel, I dismissed all the applications and supplementary documents and provided reasons for the decisions, *ex tempore,* which are not repeated herein. This judgment thus relates to the initial, main complaint of unfair discrimination.

[21] The parties' respective affidavits with annexures and their written and oral submissions were considered. The high-water mark of the complainants' case was that the reference to *"all business"* in the President's speech included FSPs such as the company. Hence, according to the first complainant, the FSP license was extended to December 2022, and payment of levies was suspended and/or pardoned.

[22] The reliance on the President's speech was, with respect, misguided, as the statement therein regarding the extension of business licenses had no legal effect. This is so because following the President's statement, the Minister of Small Business Development issued Directives which were published in the Government Gazette[6] and which must be read with Schedule 1 of the Businesses Act. Thus, it is the Directives which had legal effect or gave effect to the President's statement in his speech.

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[6] GG No. 44853, Notice No. 615, dated 15 July 2021

[23] The first complainant simply ignored material aspects of the Directives, and conveniently so in my view. To clarify, it was apparent from the Directives that the reference therein to *"business"*, meant a business that was required to acquire a license or permit and which was listed in Schedule 1 of the Business Act. Clearly, the Directives thus applied only to those businesses referred to in such Schedule, to wit, businesses which:

23.1 sold or supplied meals or perishable foodstuffs;

23.2 provided certain types of health facilities or entertainment;

23.3 hawking in meals or perishable foodstuffs

These businesses required licenses, and the Directives allowed them to operate despite the expiration of such licenses.

[24] Furthermore, it was also apparent from the definitions section of the Directives that the reference to *"license"* was a reference to a license in terms of section 2(3) of the Businesses Act. Clearly, FSPs such as Lotterie Holdings (Pty) Ltd did not fall within the ambit of the Directives as it was/is not a business as defined and referred to in Schedule 1 of the Businesses Act. Simply put, there was no reference to FSPs in Schedule 1 of the aforementioned Act.

[25] The submission by the first complainant that *"all businesses"* include FSPs, was misguided as it ignored the specific language of the Minister's Directives which clearly specified the types of businesses that would benefit from the extension granted in respect of their licenses. Furthermore, the first complainant's reference to the Government Gazette No. 44838, Notice no. 610 of 11 July 2021, which he handed in during the latter part of the hearing, did not advance the complainants' case as these were the Directives of the Department of Co-operative Governance issued in terms of the Disaster Management Act 57 of 2002 during the COVID-19 pandemic.

[26] In view of the above, counsel's submissions that the Directives did not apply to the company and other FSPs and thus, that the company was obliged to pay its levies in terms of the FAIS Act, had merit. In my view, the FSCA, which went to great lengths to inform the first complainant of its role, statutory obligations, the proper interpretation of the Directives and Schedule 1 (read with the Businesses Act), the consequences of suspension of the FSP license and the remedies available to it, could not be faulted. It bears emphasizing that the FSCA was mandated by law to oversee and regulate FSPs and clearly, on the facts evident from the affidavits and annexures relied upon by the parties, did not single out the complainants as alleged. More specifically, the Notice of Withdrawal of Authorisation, annexure KD15, sets out a comprehensive list of FSPs/licensees which had their licenses withdrawn by the FSCA due to contravention of section 15A of the FSB Act read with section 302 of the FSR Act.[7]

[27] The complaint was brought on the basis that the FSCA unfairly discriminated against the complainants as they failed to comply with the Directives and went ahead and suspended the company's FSP license notwithstanding the President's statement. Section 6 of PEPUDA contains a general prohibition against unfair discrimination against any person. This section must be read with section 1 of the Act which defines discrimination in the following terms:

> *"**discrimination** means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly-*
>
> *(a) imposes burdens, obligations or disadvantages on; or*
> *(b) withholds benefits, opportunities or advantages from,*
> *any person on one or more of the <u>prohibited grounds.</u>"*

[28] The prohibited grounds referred to in the definition of discrimination are:

> ***'prohibited grounds'*** *are –*

[7] Lotterie Holdings (Pty) Ltd also appears on the list, which was published on 7 December 2021

(a) *race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and HIV AIDS status; or*

(b) *any other ground where discrimination based on that ground –*

(i) *causes or perpetuate systemic disadvantage;*
(ii) *undermines human dignity; or*
(iii) *adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the ground in paragraph (a);*

[29] In ***Harksen v Lane NO and Others***[8], the Constitutional Court set out a three-stage enquiry which would inform whether unfair discrimination occurred in any set of circumstances. The enquiry may be summarised as follows[9]: (i) does the impugned conduct differentiate between people or categories of people and if so, does the differentiation bear a rational connection to a legitimate government purpose? (ii) does the differentiation amount to unfair discrimination?, and (iii) if the discrimination is found to be unfair, can it be justified?

[30] In ***Nedbank Ltd and Another v Survé and Others***[10], the Supreme Court of Appeal made it clear that it is *"insufficient for an applicant to baldly aver that there has been unfair discrimination. It must adduce evidence of facts that objectively support the conclusion contended for*". Objectively considered, the complaint was devoid of evidence that supported the view that the complainants were discriminated against, never mind unfairly discriminated against. In my view, the complainants did not overcome the tests set out in ***Harksen*** and ***Survé***

[8] 1998 (1) SA 300 (CC)
[9] Harksen, par [53]; Social Justice Coalition and Others v Minister of Police and Others 2019 (4) SA 82 (WCC) par [38]
[10] [2024] 1 All SA 615 (SCA)

and Others.

[31] To baldly allege unfair discrimination on the premise that the FSCA refused to pardon the company from paying its FSP levies when it should have done so in terms of the President's statement, was fundamentally flawed. As demonstrated above, the complainants' blind reliance on the President's speech and their incorrect interpretation of the Directives (as read with Schedule 1 of the Businesses Act), do not get the complainants out of the starting blocks for relief in terms of PEPUDA.

[32] There was no unfair discrimination, and hence, this Court's jurisdiction was not engaged. I need not address section 13(1) of PEPUDA which refers to the burden of proof which shifts to a respondent once a *prima facie* case of discrimination is established, as the complainants failed to meet the threshold as set out in the authorities referred to herein. In any event, in his replying affidavit, the first complainant conceded that the Directives were limited to businesses as referred to therein and as read with Schedule 1 of the Businesses Act.

[33] It must also be remembered that the FSCA did not issue the Directives, and any unhappiness with the Directives as set out in the reply for the first time, should have seen a joinder of the Minister of Small Business Development, who had a direct and substantial interest in a challenge by the first complainant who alleged that the Directives were unlawful for narrowing the scope of the President's address[11]. There was no joinder application but this aspect is in any event, academic in view of the finding that the complainants were not allowed to make out a new case in reply.

[34] In all the objective circumstances, considered alongside the Directives referred to in this matter, the withdrawal of the company's FSP license at the time was neither unfair,

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[11] Judicial Service Commission and Another v Cape Bar Council and Another 2013 (1) SA 170 (SCA) par [12]

discriminatory nor defamatory of either or both complainants. The facts were that the company did not fall within the type of business which benefited from extension granted by the Directives. It was required as FSP to comply with its obligation to pay the outstanding levies, which it failed to do, despite numerous correspondence on the issue. Furthermore, there was also no evidence that the FSCA's actions amounted to hate speech or harassment as defined by PEPUDA.

[35] There was evidence that the FSCA had suspended the licenses of numerous FSPs around the same time and on the same basis as the company's license, as it was authorized to do. Thus, it could hardly be said that the company was singled out by the FSCA's conduct.

[36] As for costs, given the FSCA's written warnings to the complainants regarding its intention to suspend the FSP license, the import of the Directives, the reference to Schedule 1 and the Businesses Act, one would have thought that the first complainant would have heeded those warnings and complied. However, as described herein, he stubbornly refused to see reason and hung his hat on his own interpretation of the President's speech yet ignored the import of the Directives. The first complainant also seemed not to have approached the Tribunal for a reconsideration of the FSP license suspension but rather dug his heels in and dragged the FSCA to this Court quite unnecessarily, in my view. The application/complaint was doomed to fail from the outset.

[37] Furthermore, the first complainant littered the record with ill-fated applications and supplementary documents intended to introduce new grounds of alleged unfair discrimination and without first seeking leave of the Court to do so. None of these attempts were proper and much Court time was spent on these aspects first before hearing the actual complaint. All these factors considered cumulatively resulted in wasted judicial time and costs, which prejudiced the FSCA as it was required to engage with and address frivolous matter unnecessarily.

appropriate costs order. This was done and, in my view, the complainants do not enjoy the protection of the ***Biowatch*** principle as the complaint was frivolous, ill-founded, and did not engage a matter of constitutional importance[12]. Considered holistically, therefore, and in view of all the factors set out above, I exercise my discretion and award costs in favour of the FSCA. Lastly, counsel for the FSCA is thanked for her very comprehensive written and oral submissions.

[39] In the result, I grant the following order:

The complainants' complaint is dismissed with costs (scale A).

[redacted]

M PANGARKER
JUDGE OF THE HIGH COURT

<u>Appearances</u>:

For Complainants: Mr D J Lotterie, in person

For Respondent: Adv R Matsala
Instructed by: Robert Charles Attorneys and Conveyancers
Cape Town

[12] Biowatch Trust v Registrar, Genetic Resources and Others 2009 (6) SA 232 (CC) par [24]