



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number:010283/2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
20 April 2026	
DATE	SIGNATURE

In the matter between:

MURRAY HECTOR MUNRO

Applicant

and

THE FINANCIAL SERVICES TRIBUNAL

First Respondent

THE JOHANNESBURG STOCK EXCHANGE LTD

Second Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN, J

Introduction

- [1] This is an application for the review of the decisions taken by the first and second respondents, respectively, on 31 July 2024 and 13 February 2023. The first respondent filed a notice to abide by the Court's decision. The second respondent opposes the relief claimed by the applicant.

Parties

- [2] The applicant, Murray Hector Munro (Munro), was the Chief Financial Officer (CFO) of Tongaat Hullett Ltd (Tongaat) between 2011 and 2018. Tongaat was a company listed at all material times on the second respondent.
- [3] The first respondent is the Financial Services Tribunal (FST), established under section 219 of the Financial Sector Regulations Act (FSR Act).¹ The first respondent confirmed the second respondent's decision that the applicant had breached certain conditions of the second respondent's Listing Requirements (Listing Requirements). The FST also confirmed the penalty imposed by the second respondent.
- [4] The second respondent is the Johannesburg Stock Exchange Ltd (JSE), which operates an equities market. The JSE investigated the applicant's conduct during his tenure as CFO of Tongaat and took the decision that formed the subject of the reconsideration application that served before the FST.

Facts

- [5] The facts upon which the decisions were taken are largely in the public domain and common cause between the parties. At the end of 2019, and after Munro's time at Tongaat came to an end, Tongaat published substantial restatements of certain of its already published financial information. The restatements were made pursuant to an investigation undertaken by PricewaterhouseCoopers (PwC), which investigation had identified that senior executives of Tongaat were responsible for various accounting irregularities that resulted, among other things, in an overstatement of Tongaat's profits.
- [6] In August 2020, the JSE informed Munro that he was under investigation for possible breaches of the listing requirements during his tenure as CFO. The investigation led to the exchange of communication between Munro and the JSE from August 2020 to February 2023.

¹ 9 of 2017.

- [7] In the first letter addressed to Munro on 3 August 2020, the JSE, relying on the restatement of the financial statements, informed Munro that the restatement possibly meant that he had breached listing requirements 8.57(a) and 8.62(b), and in general principles (v) and (vi). The letter listed fifteen categories of misstatements, and Munro was invited to give a detailed response in respect thereof.
- [8] On 31 August 2020, Munro's attorneys responded to the JSE's request. They stated that, in the absence of disclosure of the full PwC report, the JSE relied upon in support of the conclusions reached in its letter, Munro is unable to provide a "*detailed response*". Munro tendered his full cooperation in the investigation and, whilst awaiting the report, provided a general overview of his role at Tongaat and the process involved in preparing financial statements.
- [9] Nothing much transpired until the JSE addressed a further letter to Munro's attorneys on 17 September 2021. The PwC report was not provided, but details in respect of one of the fifteen categories of alleged misstatements, to wit: "*Inappropriate recognition of revenue from land sales*" were provided. Three land sales contracts concluded in 2015 were attached, and the JSE dealt in detail with the reason why it was of the view that the revenue of the sales was incorrectly reflected in the financial statements in breach of International Accounting Standard (IAS) 18.14.
- [10] Munro's attorney responded on 15 November 2021, disagreeing with the view taken by the JSE and providing an equally detailed explanation of Munro's interpretation of IAS 18.14. According to Munro, the revenue from the land sales was correctly reflected in the financial statements.
- [11] According to Munro, the three contracts that had to be restated in the financial statements represented a disputed interpretation of one accounting standard in two years of accounting and were confined to just two subsidiaries in the group of companies. Munro, once again, requested the PwC report and also requested access to Tongaat's records and systems insofar as Tongaat's historic accounting and reporting practices formed part of the investigation. Munro, furthermore, pointed out that the accounting method utilised by Tongaat during

his tenure had been endorsed by Tongaat's internal auditors, KPMG, and its external auditors, Deloitte.

- [12] In respect of PwC report, the JSE stated the following in a letter dated 10 December 2021:

"It is incorrect to assume that the JSE's investigation relied on the findings of the PwC report and represents a miniature version of the investigation conducted by PwC for which would require access to the PwC Report in order to respond to the JSE. The JSE separately and independently analysed the restatements published by Tongaat and the reasons underpinning the restatements and requested certain documents from Tongaat in this regard. These documents were independently reviewed by the JSE for purposes of formulating its allegations against Mr. Munro in accordance with the Listing Requirements. The JSE provided Mr. Munro with all the documents that it utilized and relied on and will strive to continue doing so. However Mr. Munro is encouraged to call upon his former employer to approve to provide him with access to any further documents that he may deem necessary for him to respond fully to the JSE's allegation to his satisfaction."

- [13] Insofar as the necessity to provide further documents is concerned, the JSE expressed the following view:

"For practical reasons, the JSE is of the view that the classes of transactions sampled are sufficient for the purposes of its investigation and does not consider it necessary to refer to each transaction that was included in the financial statements that were subsequently restated. Sampling is a well-known technique of drawing conclusions about a representative sample of documents based on its components. Should Mr. Munro require the JRE to present additional transactions, he should make a formal request, the basis and merits of which will be considered by the JSE in acceding to his request."

- [14] On 29 April 2022, the JSE's took the following decision:

"Having carefully considered contents of all the correspondence exchanged between Mr. Munro and the JSE, JSE finds Mr. Munro, in his capacity as the

former Chief Financial Officer of Tongaat, to be in breach of the following Listing Requirements:

- a) Paragraph 8.57 (a) and 8.62 (b) as his actions directly resulted and/or contributed to the restatement of Tongaat's previously published financial statements for 2018 and the opening balance of retained earnings in respect of the errors between 2011 and 2017 not being in compliance with the requirements of IFRS and the Listing Requirements which included the intervening interim financial periods, due to numerous material errors contained therein. Mr. Munro was the highest-ranking financial executive in the Company and bore ultimate responsibility for the supervision, preparation and compilation of the Company's financial statements. Mr. Munro knew, or ought to have known, that due to the numerous undesirable accounting practices, Tongaat's previously published financial information failed to comply with IFRS and was incorrect, false and misleading in material respects;*
- b) General Principle (v) dealing with the accuracy of financial statements as Mr Munro failed to exercise the highest standard of care in the dissemination of Tongaat's financial information into the marketplace, whether directly to holders of relevant securities or to the public; and*
- c) General Principle (vii) VI as Mr. Manuel failed to ensure that the Listing Requirements, and in particular the continuing obligations, promote investor confidence in standards of disclosure and corporate governance in the conduct of applicant issuers' affairs and in the market as a whole."*

[15] On 13 September 2022, Munro was invited to make submissions regarding an appropriate sanction to be imposed.

[16] Having considered Munro's submissions and on 13 February 2023, the JSE imposed the following penalties: a public censure, a fine of R 7 500 000, 00, and an immediate disqualification from holding the office of director or officer of a listed company for a period of 10 years.

[17] Munro applied for a reconsideration of the finding of the JSE, and on 31 July 2024, the FST confirmed both the finding on the breach and the penalty imposed by the JSE.

Grounds of review

[18] The review is premised on the following grounds contained in the Promotion of Administrative Justice Act (PAJA):²

18.1 section 6(2)(c): the decision was procedurally unfair;

18.2 section 6(2)(d): the decision was materially influenced by an error of law;

18.3 section 6(2)(e)(iii): irrelevant considerations were taken into account or relevant considerations were not considered;

18.4 section 6(2)(f)(ii)(cc): the decision is not rationally connected to the information before the administrator;

18.5 section 6(2)(h): the exercise of the power or the performance of the functions authorised by the empowering provision, in pursuance of which administration action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function; or

18.6 section 6(2)(i): the decision is otherwise unconstitutional or unlawful.

Procedurally unfair

[19] In order for administrative proceedings to be fair, a person must be provided with sufficient information to answer to the proposed administrative action. This requirement was explained in *Klein v Dainfern College and Another*³ as follows:

“It is a principle of natural justice that the accused is entitled to have the charge clearly formulated with sufficient particularity in such a manner as will leave him or her under no misapprehension as to the specific act or conduct proposed to be investigated. The

² 3 of 2000.

³ *Klein v Dainfern College and Another* 2006 (3) SA 73 T at para 35.

charge-sheet must also clearly indicate the nature of the offence although it need not set out the same detail and precision as is required in a criminal indictment.”

- [20] Whether a person has been provided with sufficient particularity of the proposed administrative action will depend on the nature of the proceedings, the conduct that forms the subject matter of the proposed administrative action and the extent of the ultimate decision.
- [21] The JSE based its decision on three transactions and held that the transactions breached paragraph 8.57(a) and 8.62(b) as well as General Principles (v) and (vii).
- [22] Insofar as the three transactions are concerned, the JSE provided all the information in its possession to Munro and explained in detail the reason why the recordal of the transactions in the financial statements did not comply with IAS 18.14. The information enabled Munro to provide a detailed response, and in my view the information was sufficient for purposes of the finding that Munro breached the Listing Requirements referred to.
- [23] The breach, however, only pertains to two financial years, one of which is 2015. The finding that Munro’s *“actions directly resulted and/or contributed to the restatement of Tongaat’s previously published financial statements for 2018 and the opening balance of retained earnings in respect of the errors between 2011 and 2017 not being in compliance with the requirements of IFRS and the Listing Requirements”* covers a much wider period than the two financial years. Munro has not been informed of or provided with any details in respect of the breaches he allegedly committed in the remainder of the financial period.
- [24] For purposes of the investigation done by the JSE, the so-called *“sampling technique”* might suffice. Administrative law is, however, not concerned with the standard of proof that is acceptable to the JSE and the FST, but with the fairness of the procedure that has been followed in reaching the decision.
- [25] In finding that Munro breached the Listing Requirements in the remainder of the financial periods without providing sufficient information to enable Munro to

respond meaningfully to the allegations is procedurally unfair, and for this reason, the application should succeed.

[26] The finding pertains to the decisions of both the JSE and the FST.

[27] Once a fair process has been followed, the decision may or may not be reviewable on any of the other grounds relied upon by Munro. At this stage, however, it is premature to consider the remaining grounds of review.

Remedy

[28] The applicant did not propose a remedy as envisaged in section 8 of PAJA. In view of the grounds on which the review succeeded, I am of the view that the matter should be remitted to the JSE for reconsideration in terms of section 8(1)(c)(i). The JSE is ordered to follow a fair procedure in reconsidering the matter.

Costs

[32] Costs should follow the result, including the costs of two counsel on scale C.

Order

1. The decision of the first respondent of 31 July 2024 and the decision of the second respondent of 13 February 2023 are reviewed and set aside.
2. The matter is remitted to the second respondent for reconsideration. The second respondent is ordered to follow a fair procedure in reconsidering the matter.
3. The second respondent is ordered to pay the costs of the application, including the costs of two counsel on scale C.


JANSE VAN NIEUWENHUIZEN J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION

DATE OF HEARING: 11 February 2026

DATE OF JUDGMENT: 20 April 2026

APPEARANCES

Counsel for the applicant:	C M Eloff SC A H Morrissey
Instructed by:	Bowman Gilfillan Inc.
Counsel for the second respondent:	I Green SC M Kruger
Instructed by:	Webber Wentzel

