



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 23 September 2026

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgment of the Supreme Court of Appeal

Financial Intelligence Centre and Others v Ndudane and Others (267/2025) [2026] ZASCA 122 (23 September 2026)

Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Western Cape Division of the High Court, Cape Town, sitting as the Equality Court (Equality Court) and set aside and substituted the Equality Court's order with the following: 'The application is dismissed with costs, including those of two counsel where so employed, on scale C.'

The issue in this appeal is whether it was competent for the Equality Court to order the appellant, the Financial Intelligence Centre (the Centre) which is established in terms of the Financial Intelligence Centre Act 38 of 2001 (the Act), to disclose certain information. The information is confidential in nature and is required, in terms of the provisions of the Act, to be submitted to the Centre by accountable institutions, which include commercial banks.

Dr Iqbal Survé and other members of the Sekunjalo group instituted proceedings against several banks, alleging that decisions affecting their banking relationships were arbitrary, unlawful and amounted to unfair discrimination under the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. The Centre was joined as a respondent. The respondents subsequently sought access to information held by the Centre, contending that it would assist them in establishing whether the banks' decisions constituted unlawful discrimination.

The issues before the SCA were whether an appeal lay against the abandoned judgment; whether the Equality Court erred in ordering disclosure; whether there was a fatal non-joinder of interested parties; whether the respondents had *locus standi* to seek the order; and the appropriate costs order. The issue of disclosure was dispositive of the appeal.

The SCA held that abandonment of a judgment and order entails the exercise of an election by a litigant not to enforce the rights and benefits obtained in terms of the order. It normally brings an end to the *lis* (dispute) between the parties thereto, and no order remains to appeal. *Inter partes* (as between the parties) the merits of the order are rendered moot. The judgment, however, does not cease to exist. The SCA in the exercise of its discretion, decided to hear the appeal.

The SCA found that s 40 and even more so s 41, do not create a general right of access to confidential information. Rather, they protect information submitted as part of the statutory reporting system, by providing for only circumscribed exceptions to the general rule of confidentiality. Any entitlement to the disclosure claimed by the respondents could only be founded on s 40(1)(e). The purpose of s 40(1)(e) *ex facie* (on the face) of its text, in context and having regard to the purpose of the Act, is to provide, in those instances where a right to disclosure exists, that the restrictions on disclosure in the Act may have to yield to such right to disclosure, if ordered by a court.

The SCA found that the Equality Court erred by ordering disclosure merely because fairness required it. The Court had effectively moved from the relevance of the information to disclosure without first determining whether the statutory requirements for disclosure had been satisfied. This created a disclosure mechanism not contemplated by the Act.

The SCA held further that confidential information obtained and held by the Centre pursuant to the Act, cannot be assimilated to ordinary discoverable litigation material merely because it may be relevant to civil proceedings. Parliament deliberately created a specialised regime of confidentiality to promote the effective functioning of South Africa's anti-money laundering efforts. That statutory purpose, together with the principles of subsidiarity, procedural fairness and proportionality, require that any departure from confidentiality be permitted only where clearly authorised by law, after all affected parties have been heard and subject to carefully tailored judicial safeguards.

The abandonment of the order upon the grant of leave to appeal, is of little, if any, consequence regarding costs. It did not undo the course of action which commenced when the respondents launched the disclosure application, for relief to which they were not entitled and resulting in an order which required correction on appeal. No circumstances warranted a departure from the general principle that costs should follow the result.

As a result, the SCA upheld the appeal and set aside and substituted the Equality Court's order with 'The application is dismissed with costs, including those of two counsel where so employed, on scale C.'