



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: 10 November 2023

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 judgments of the Supreme Court of Appeal

Ilse Becker and Others v The Financial Services Conduct Authority and Others
(454/2022) [2023] ZASCA 149 (10 November 2023)

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal in which ss 154, 167 and 231 of the Financial Sector Regulation Act 9 of 2017 (the Act) were challenged on the basis that these provisions infringed the appellants' right to procedural fairness guaranteed in terms of s 33 of the Constitution.

An investigation was conducted into the affairs of the appellants. The investigation concluded in a report that the appellants had contravened the Short-Term Insurance Act 53 of 1998. The Financial Services Conduct Authority (the Authority) gave notice to the appellants that it was prima facie of the view that the appellants were in contravention of certain financial sector laws and that it proposed to impose an administrative penalty of R200 million and make a debarment order against two of the appellants. The Authority invited the appellants to make submissions on the investigative report and the proposed administrative penalty and proposed debarment.

The appellants made comprehensive submissions, but also challenged the constitutional validity of the powers enjoyed by the Authority, in terms of the Act, to make a debarment order and impose an administrative penalty. Their challenge did not prevail in the high court.

In their appeal before the SCA, the appellants contended that while ss 154 and 167 afforded the appellants a right to make submissions to the Authority concerning the sanctions that might be imposed upon them, the Act did not provide the appellants with procedural fairness in respect of the Authority's finding that the appellants had contravened certain financial sector laws. And since this finding was a necessary stage of decision-making by the Authority before it could decide upon any sanction, the Act was constitutionally invalid.

The SCA dismissed this challenge. Upon a proper interpretation of ss154 and 167, the appellants enjoyed the right to make submissions and have those submissions considered by the Authority both as to the issue of the contravention of certain financial sector laws and any possible sanctions that might follow. The Authority cannot make any final decision as to the contravention of certain financial sector laws before inviting the appellants to make submissions on this issue and considering those submissions. Sections 154 and 167, the SCA found, are not invalid for want of procedural fairness and the appeal was accordingly dismissed.

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