THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 267/2025

In the matter between:

FINANCIAL INTELLIGENCE CENTRE	**APPELLANT**
NEDBANK LIMITED	**FIRST INTERVENING PARTY**
ABSA BANK	**SECOND INTERVENING PARTY**

and

SIPHOKAZI NDUDANE	**FIRST RESPONDENT**
TCQ FISHERIES MANAGEMENT GROUP (PTY) LTD	**SECOND RESPONDENT**
DENNIS HENRY GEORGE	**THIRD RESPONDENT**
AMAVEL MOTA MOREIRA	**FOURTH RESPONDENT**
MOTA MOTOR COMPANY t/a MOTA LOGISTICS (PTY) LTD	**FIFTH RESPONDENT**
DEMOCRACY IN ACTION	**SIXTH RESPONDENT**

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

Coram: HUGHES ADP, KATHREE-SETILOANE and KOEN JJA, KOOVERJIE and MOOKI AJJA

Heard: 4 September 2026

Delivered: 23 September 2026

Summary: Financial Intelligence Centre Act 38 of 2001 (the Act) – confidential information submitted to the Financial Intelligence Centre – purpose and scope of the Act – interpretation of ss 40(1)*(e)* and 41*(e)* – whether respondents proved an established right to disclosure of confidential information which a court should order.

Practice – whether appeal against abandoned court order should nevertheless be determined in the interest of justice.

Practice – whether order for disclosure of information competent where parties who provided the information and entities in respect of which information provided not cited – *locus standi in iudicio* to claim disclosure of information – whether order would result in impermissible fishing for information.

Costs – of appeal where judgment abandoned prior to appeal.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town, per Thulare J, sitting as the Equality Court:

1 The appeal is upheld.

2 The respondents jointly and severally are directed to pay the costs of the appellant, the Financial Intelligence Centre, such costs to include those of two counsel where so employed.

3 The order of the Equality Court is set aside and substituted with the following order:

'The application is dismissed with costs, including those of two counsel where so employed, on scale C.'

JUDGMENT

Koen JA (Hughes ADP and Kathree-Setiloane JA and Kooverjie and Mooki AJJA concurring)

Introduction

[1] The issue in this appeal is whether it was competent for the Western Cape High Court, sitting as the Equality Court (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,[1] which include commercial banks.

[1] 'Accountable institution' is defined in the Act to mean a person referred to in Schedule 1, which includes, amongst others, a legal practitioner, estate agent, person who carries on 'the business of a bank' as defined in the Banks Act 94 of 1990, a mutual bank, the Postbank, and the like.

[2] The respondents, at whose instance the order was granted, are respectively Ms Siphokazi Ndudane, TCQ Fisheries Management Group (Pty) Ltd, Mr Dennis Henry George, Amavel Mota Moreira, Mota Motor Company trading as Mota Logistics (Pty) Ltd and Democracy in Action NPC. The other parties to the appeal are the first intervening party, Nedbank Ltd (Nedbank) and the second intervening party, ABSA Bank Ltd (ABSA). The appeal is with the leave of the Equality Court. The appellant, Nedbank and ABSA are collectively referred to as the appellants.

[3] The appellants seek an order setting aside the order of the Equality Court. The respondents have not participated in the appeal.

Background

[4] Dr Iqbal Survé and a number of other parties (the Sekunjalo group) instituted an application (the main application) in the Equality Court against Nedbank, ABSA, FirstRand Bank Limited trading as FNB (FNB), Investec Bank Ltd (Investec) and The Standard Bank of South Africa Ltd (Standard Bank). The Sekunjalo group contends that decisions by the banks, which have impacted on their banking relationships with them, are arbitrary, unlawful and amount to unfair discrimination[2] as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA). The banks

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[2] The Sekunjalo group initially obtained interim relief from the Equality Court preventing the closure of its accounts and requiring the reopening of accounts already closed - *Surve and Others v Nedbank Limited and Another* [2022] ZAEQC 3 (17 June 2022), but this was overturned by this Court - *Nedbank Limited and Another v Surve and Others* [2023] ZASCA 178; 2023 JDR 4811 (SCA); [2024] 1 All SA 615 (SCA). The subsequent application to the Constitutional Court for leave to appeal was refused on 4 September 2024. In parallel with the Equality Court proceedings, the Sekunjalo group instituted proceedings in the Western Cape High Court exercising its ordinary jurisdiction, seeking to review the banks' decisions to terminate the groups' bank accounts as unlawful and therefore liable to be set aside. This relief was sourced in the common law, not the provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. In the context of those High Court proceedings, an interlocutory application was instituted, relying on the provisions of Uniform rule 35(12) and (14), to compel the disclosure of certain documents. The disclosure sought did not extend to STRs (reports of suspicious and unusual transactions) submitted to the Centre. Hathorn AJ ordered disclosure of the banks' policies, in terms of Uniform rule 35(14), as being relevant to a reasonably anticipated issue in the pending review proceedings, but subject to a strict confidentiality regime agreed between Nedbank and the group. The High Court proceedings have subsequently been withdrawn against Nedbank.

dispute these allegations. They maintain that their decisions are based on lawful commercial, regulatory and risk-management considerations.

[5] The Centre was joined as a respondent to the main application.[3] The respondents subsequently intervened as co-applicants in the main application, seeking similar relief and on similar grounds as the Sekunjalo group. Specifically, they claim that their dealings with Investec, FNB and ABSA were affected in an unlawful discriminatory manner.

[6] On 18 October 2022, the respondents launched the application which resulted in the order giving rise to this appeal. They contend that they require access to information collected by the Centre, as it would assist in establishing whether the banks' decisions constitute unlawful discrimination.

[7] In their Notice of Motion, the respondents sought an order directing the Centre to:

(a) release to them the Risk Management and Compliance Programmes (RMCPs), made to the Centre by ABSA, FNB, Investec, Nedbank and the Standard Bank (paragraph 1 of the Notice of Motion);

(b) provide them with all reports of Suspicious and Unusual Transactions (STRs) made in terms of s 29(1) of the Act by any accounting institution in the last five years, including any additional information and grounds for the report which might have been acquired by the Centre for the performance of its functions in terms of s 32(2) in respect of the respondents (paragraph 2 of the Notice of Motion);

(c) release to them all STRs made by any accounting institution in the last five years, including any additional information and grounds for the report

[3] The Centre countered with an application seeking a declaration that it was mis-joined, or alternatively, the dismissal of the main application insofar as it relates to the Centre because it does not disclose a cause of action against it and constitutes an abuse of the process of the court. The judgment in that application is standing over pending the outcome of these proceedings.

which has been acquired by the Centre for the performance of its functions in terms of s 32(2) of the Act, in respect of Sekunjalo Investment Holdings (Pty) Ltd and the entities listed in annexure 'A' to the Notice of Motion (paragraph 3 of the Notice of Motion):

(d) release to them all STRs, including any additional information and grounds for the reports as acquired by the Centre for the performance of its functions in terms of s 32(2) of the Act, in the last five years regarding EOH Holdings and its subsidiaries EOH Mthombo, EOH Afrika, EOH Managed Service and EOH Abantu; KPMG Services (Pty) Ltd, South Africa, Steinhoff International Holdings NV and Tongaat Hullett Development, a subsidiary of Tongaat Hullett Limited (paragraph 4 of the Notice of Motion); and

(e) disclose to them if it has directed, as contemplated in s 34(1) of the Act, that an accountable institution must not proceed with carrying out a transaction in respect of the entities and/or individuals listed in paragraphs 2, 3 and 4, of the Notice of Motion in the last five years (paragraph 5 of the Notice of Motion).

[8] RMCPs[4] are records which demonstrate institutional compliance with the provisions of the Act. STRs[5] involve information received from people, entities and accountable institutions with statutory reporting obligations, as well as from people who carry on a business, are in charge of a business or manage a business, as per the generic reporting obligations in the Act.

[9] The banks were served with the application but not cited as parties thereto. Nedbank explains that it did not oppose the application because the respondents in the founding affidavit expressly disavowed seeking relief against the banks.

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[4] See s 42(1) of the Financial Intelligence Centre Act 38 of 2001 (the Act).
[5] See s 29 of the Act.

[10] In its order of 13 February 2024, the Equality Court however directed the Centre to provide the respondents with 'the documents requested in prayers 1-5 of the Notice of Motion' within twenty days of the date of the order. It ordered the Centre to pay the costs of the application, including the costs of two counsel where so employed.[6]

[11] The Centre applied for leave to appeal against the order. ABSA and Nedbank applied for leave to intervene and leave to appeal the order.[7] On 10 February 2025, when the application for leave to appeal was argued, the respondents withdrew their opposition to both applications. They also formally abandoned the Equality Court's order by filing a notice as provided in Uniform rule 41(2). The appellants persist with the appeal notwithstanding the abandonment of the order.

The issues arising in the appeal

[12] The issues for determination are: (a) whether an appeal should lie in respect of the abandoned judgment; (b) whether the Equality Court erred in directing the disclosure of the information; (c) whether there was a fatal non-joinder of interested parties, specifically the banks and certain other persons and entities; (d) whether the respondents established *locus standi in iudicio* (legal standing) to claim the order granted by the Equality Court; and (e) the costs of the appeal. The determination of the issue in (b) above, is dispositive of the appeal. The issues in (c) and (d) would afford additional grounds for setting aside the Equality Court's order.

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[6] The full judgment of the Equality Court is reported as *Ndudane and Others v Financial Intelligence Centre* (EC/01/22) [2024] ZAWCHC 38; 2024 (5) SA 549 (WCC).

[7] They did so on the basis that the order affected their confidential and commercially sensitive information without them having been heard; the Equality Court had ordered disclosure in the absence of affected parties; the respondents had not established a right to disclosure of the information; further, in the case of Nedbank in particular, the respondents had no direct relationship with it; and that the request amounted to an attempt to obtain information in the hope that something useful might emerge rather than a request for identified evidence relevant to a defined issue.

The abandonment of the judgment, mootness and the interest of justice

[13] 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.[8]

[14] The judgment of the Equality Court has been reported.[9] It is binding on the Centre and can be invoked for its precedential value in future disputes. It deals with a novel issue of considerable importance concerning the statutory powers, functions and responsibilities of the Centre. It impacts materially on the manner in which the Centre should exercise its statutory powers and it could influence other courts confronting similar issues.[10] Whether disclosure of the information, based on the Equality Court's reasons why it should, remains a live issue, having practical effect, is binding authority on a matter of great public importance, and affects the jurisprudence regarding matters regulated by the Act. Where future litigants make demands similar to those made by the respondents for the disclosure of records held by the Centre, the Centre will be obliged to comply with the terms of the judgment, unless corrected.

[15] A 'live issue' raising a question of law of public importance, which is likely to arise again in the future, justifies the exercise of this Court's discretion to adjudicate the appeal. In *City of Tshwane Metropolitan Municipality and Others*

[8] *Coetzer v Wesbank t/a FirstRand Bank Ltd* (2020/7439) ZAGPJHC 112; 2022 (2) SA 178 (GJ) paras 26-27; see also *Body Corporate of 22 West Road South v Ergold Property Number 8 CC* 2014 JDR 2258 (GJ) page 6; *Sebola v Standard Bank of South Africa Ltd and Another* [2012] ZACC 11; 2012 (5) SA 142 (CC); 2012 (8) BCLR 785 (CC) (*Sebola*)paras 32-34.

[9] *Ndudane* fn 6.

[10] *Minister of Justice and Correctional Services v Estate Stransham-Ford* [2016] ZASCA 197; [2017] 1 All SA 354 (SCA); 2017 (3) BCLR 364 (SCA); 2017 (3) SA 152 (SCA) para 27; *Sebola* fn 8 paras 33-34 and *AD and Another v DW and Others (Centre for Child Law as Amicus Curiae; Department of Social Development as Intervening Party)* [2007] ZACC 27; 2008 (3) SA 183 (CC); 2008 (4) BCLR 359 (CC) paras 19-20.

v Nambiti Technologies,[11] which concerned the validity of a tender due to expire within a month of the date of the judgment, the court, notwithstanding imminent impending mootness, entertained the appeal because the dispute raised a discrete issue of public importance, was far-reaching, impinged on the powers of municipal councils, and would have an effect on future disputes. This Court concluded that 'the mootness of the appeal should not bar the court from addressing the merits'.[12] The same is true of the present appeal.

[16] Similarly, in *Road Accident Fund v Faria*,[13] this Court noting the frequency with which the Road Accident Fund is involved in litigation, held, in regard to the interpretation of regulations of the Fund, that it was in the public interest to hear the appeal, although it was moot. It noted that the interpretation issue would arise in a number of similar cases, both existing and anticipated, in the near future and needed to be resolved, otherwise the confusion would continue unabated. This appeal similarly involves an issue of statutory interpretation, as will become apparent below. The prevailing confusion created by the judgment of the Equality Court will persist if it is not resolved by this Court.

[17] In *Natal Rugby Union v Gould*,[14] the election of the president of a rugby union had been found to be invalid due to procedural irregularities. The appeal to this Court was preceded by the rugby union convening a special general meeting at which a new president was elected, rendering the initial dispute moot. The appeal was nonetheless entertained, as absent the appeal, the judgment of the Court below would have continued to influence the procedure adopted in respect

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[11] *City of Tshwane Metropolitan Municipality and Others v Nambiti Technologies* [2015] ZASCA 167; 2016 (2) SA 494 (SCA); [2016] 1 All SA 332 (SCA) (*Nambiti*).
[12] Ibid para 7.
[13] *Road Accident Fund v Faria* [2014] ZASCA 65; 2014 (6) SA 19 (SCA); [2014] 4 All SA 168 (SCA) paras 21 and 25.
[14] *Natal Rugby Union v Gould* 1999 (1) SA 432 (SCA); [1998] 4 All SA 258 (A) at 441-445B.

of the election of office bearers and thus have a 'practical effect or result', as contemplated in the then Supreme Court Act 59 of 1959.[15]

[18] As to what is meant by having a 'practical effect', this Court in *Centre for Child Law v The Governing Body of Hoërskool Fochville and Another*,[16] which concerned a ruling made by the High Court on the interpretation of rule 35(12), held that unless corrected on appeal, the practical effect would be that the judgment would continue to influence how litigants approach such an enquiry. Thus, future litigants were entitled to the benefit of its view on the issue.

[19] In *Sebola*[17] the Constitutional Court held in regard to an abandoned judgment, that it was nevertheless desirable and in the interests of certainty and justice, that it decide the appeal. It stated that the meaning it would assign to the provisions of the National Credit Act in issue, would have a significant practical impact. This reasoning was followed in *Ruta v Minister of Home Affairs*,[18] the Constitutional Court noting that:

'In *Sebola*, the bank had expressly abandoned the judgment sought to be overturned and tendered the relief the applicants sought. The dispute between the parties was therefore moot. At the insistence of the debtor this [C]ourt nevertheless proceeded. It did so, on the "axiomatic" basis that mootness is no absolute bar to determining an issue: the question is whether the interests of justice require that it be decided.'

[20] The determination of this appeal will have a 'practical effect or result', in as much as a discrete legal issue of public importance arises which will affect

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[15] Section 16(2)(*a*)(i) of the Superior Courts Act 10 of 2013 provides that if '… at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone'.

[16] *Centre for Child Law v The Governing Body of Hoërskool Fochville and Another* [2015] ZASCA 155; [2015] 4 All SA 571 (SCA); 2016 (2) SA 121 (SCA) para 14. Dictum applied in *POPCRU v SACOSWU and Others* [2018] ZACC 24; 2019 (1) SA 73 (CC); [2018] 11 BLLR 1035 (CC); 2018 (11) BCLR 1411 (CC); (2018) 39 ILJ 2646 (CC) para 81.

[17] *Sebola* fn 8 para 34. Dictum applied in *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Exploration and Exploitation SOC Ltd and Another* [2020] ZACC 5; 2020 (4) SA 409 (CC); 2020 (6) BCLR 748 (CC) para 57.

[18] *Ruta v Minister of Home Affairs* [2018] ZACC 52; 2019 (3) BCLR 383 (CC); 2019 (2) SA 329 (CC) para 9.

claims for the disclosure of information held by the Centre in the future. The Centre will continue to receive a high frequency of STRs; there is a high likelihood that similar cases will arise in future; and the issues raised on the merits in this appeal will most likely require to be resolved authoritatively in the near future.[19] A pronouncement by this Court will avoid unnecessary confusion, dispute, and further litigation.

[21] It is therefore desirable and in the interests of justice that this Court decide the appeal, particularly in relation to the interpretation of the Act and that authoritative guidance be provided, notwithstanding the abandonment of the order.[20] Although the respondents have not participated in the appeal, their arguments in support of the order were fully canvassed before the Equality Court[21] and in the judgment of the Equality Court and are available to this Court to evaluate.

The merits

The reasoning of the Equality Court

[22] The Equality Court reasoned that it was necessary for the respondents to approach the court 'so that if successful, they qualify' in terms of s 40(1)*(e)* of the Act. In effect, it found that once it makes an order for disclosure,[22] the respondents have a right under s 40(1)*(e)* to the information. In this respect, it

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[19] *Legal-Aid South Africa v Magidiwana and Others* [2015] ZACC 28; 2015 (6) SA 494 (CC); 2015 (11) BCLR 1346 (CC) paras 27-30.

[20] Consistent with the decisions in *Independent Electoral Commission v Langeberg Municipality* [2001] ZACC 23; 2001 (3) SA 925 (CC); 2001 (9) BCLR 883 (CC), *Road Traffic Management Corporation v Waymark (Pty) Ltd* [2019] ZACC 12; 2019 (6) BCLR 749 (CC); 2019 (5) SA 29 (CC) and *Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs* [2023] ZASCA 35; 2023 JDR 0964.

[21] The respondents argument before the Equality Court included inter alia that: the requested documents were relevant and necessary to advance their discrimination claims before the Equality Court; the information held by the Centre would assist in establishing the reasons underlying the banks' decisions to terminate banking relationships; s 40 and s 41 of the Act permit disclosure pursuant to a court order; the Equality Court was therefore empowered to direct the Centre to provide the requested information; and disclosure was justified in the circumstances as any confidentiality concerns raised by the appellants did not outweigh their need for access to information relevant to the Equality Court proceedings.

[22] It viewed its order as an interlocutory disclosure order authorised under s 21(5) of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA).

erred because that finding begs the question from which the enquiry should proceed, namely, what was the right that could give rise to such an order? A court can issue an order that a party has an extant right to certain information, but the right to disclosure of the information must precede and exist independently of the order. It cannot be created by a court order. It is settled law that judges are bound by the principle of legality. The judicial function is not a licence for a court to do what it considers just; judicial power must have a legal foundation. As remarked in *NDPP v Zuma*,[23] it is a basic tenet of our law that judges are themselves constrained by the law.

[23] The Equality Court was equivocal as to the legal basis which would make respondents 'successful' and entitled to a court order in their favour. It ruminated that '(s)ection 32(1) of the Constitution and section 40(l)*(e)* read with 41*(d)* and *(e)* [of the Act], are the sources of the rights of the [respondents] to the information that they wanted the [Centre] to provide to them'. It also relied on the judgment in *Minister of Finance v Oakbay Investments (Pty) Ltd and Others* (*Oakbay*)[24] in support of its conclusion. It viewed the information sought as relevant to determining whether the banks had terminated their banking relationships for discriminatory rather than legitimate commercial or regulatory reasons. These are considered in turn below.

Section 32 of the Constitution, subsidiarity and PAIA

[24] Section 32 of the Constitution provides that everyone has the fundamental right to access information held by *inter alia* the State to protect their rights. Section 32 requires that national legislation must be enacted to give effect to this right. The Promotion of Access to Information Act 2 of 2000 (PAIA) is the national legislation that was enacted. PAIA establishes a comprehensive

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[23] *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA); 2009 (1) SACR 361 (SCA); 2009 (4) BCLR 393 (SCA); [2009] 2 All SA 243 (SCA) para 15.
[24] *Minister of Finance v Oakbay Investments (Pty) Ltd and Others* (80978/2016) [2017] ZAGPPHC 576; [2017] 4 All SA 150 (GP); 2018 (3) SA 515 (GP) (*Oakbay*) para 46.

framework regulating requests for information, including applicable procedures, grounds for refusal of information and remedies to give effect to the constitutional balance between transparency and competing interests, privacy, confidentiality, commercial sensitivity, law enforcement interests and public safety.

[25] It is trite that the respondents, in accordance with the principle of subsidiarity, cannot rely directly on the provisions of s 32, unless the constitutionality of a provision of PAIA itself is challenged.[25] In this case, there is no such challenge. The Equality Court erred in placing reliance on s 32 as conferring a general right to order disclosure.

[26] The respondents have not sought to rely on, and the Equality Court has not invoked the provisions of PAIA in support of its judgment, and rightly so. Section 7 of PAIA provides that its provisions do not apply to access to a record if requested for the purpose of criminal or civil proceedings after the commencement of such proceedings, and if the production of, or access to that record in the proceedings is provided for in any other law. The respondents had sought the disclosure of the information for the purposes of the pending main application, a civil process which had already commenced. Access to such information could furthermore be obtained as provided in other law, namely that relating to discovery. The rationale for s 7 of PAIA is not difficult to understand. Disclosure during litigation is comprehensively regulated by the law relating to discovery provided for in the Uniform Rules of Court, which takes cognisance, where discovery of documents is sought, of whether the documents are privileged from disclosure, whether due to confidentiality, professional privilege, or otherwise.

[25] *My Vote Counts NPC v Speaker of the National Assembly and Others* [2015] ZACC 31; 2016 (1) SA 132 (CC); *PFE International Inc and Others v Industrial Development Corporation of South Africa Ltd* [2012] ZACC 21; 2013 (1) SA 1 (CC); 2013 (1) BCLR 55 (CC) and *South African National Defence Union v Minister of Defence and Another* [1999] ZACC 7; 1999 (4) SA 469 (CC); 1999 (6) BCLR 615 (CC); (1999) 20 ILJ 2265 (CC).

Sections 40 and 41 of the Act

[27] In the alternative to s 32 of the Constitution, the Equality Court reasoned that a right to disclosure of the confidential information was to be found in s 40(1*)(e)* and s 41*(e)* of the Act. Whether this conclusion was correct requires a proper interpretation of the two subsections, applying the well-established approach to statutory interpretation in *Natal Joint Municipal Pension Fund v Endumeni Municipality* (*Endumeni*),[26] having regard to the context and scheme, purpose and text of the provisions of the Act.

[28] When the then Deputy Minister of Finance tabled the Financial Intelligence Centre Bill in the National Council of Provinces on 6 November 2001, he explained the purpose of the Act as complementing the Prevention of Organised Crime Act (POCA).[27] He stated:

'The object of the FIC Bill is to introduce mechanisms and measures aimed at preventing and combatting money laundering activities. It sets up an anti-money laundering regime which encourages voluntary compliance and self-regulation by institutions which otherwise may be exploited for money laundering purposes. To the extent, the FIC Bill complements and works with the Prevention of Organised Crime Act (POCA) 1998.

The Bill establishes a Financial Intelligence Centre which will coordinate policy and Government 's efforts to counter money laundering activities.

…

The Centre will bring together all financial intelligence data into one single repository for analysis before passing this information on to the law enforcement agencies for further investigation and prosecution. The Financial Intelligence Centre is being established for financial intelligence gathering and analysis. It will receive reports from accountable institutions. It will then process, analyse, and interpret the data before passing this information

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[26] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA); [2012] 2 All SA 262 (SCA). See also *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) (*Cool Ideas*) paras 28-30 and *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA) (*Capitec*) paras 25-26.
[27] The Prevention of Organised Crime Act 121 of 1998 (POCA).

over to the law enforcement authorities which in turn will use the information for further investigation and ultimately prosecution.'

[29] The long title of the Act is consistent with this purpose, namely: to establish the Centre as an independent statutory body responsible for receiving, analysing and disseminating financial intelligence and assisting law enforcement and supervisory authorities to combat money laundering activities and the financing of terrorist and related activities; to provide for the sharing of information by the Centre; to impose certain duties on persons and institutions that might be used for money laundering, the financing of terrorism and related activities; and to provide for risk management and compliance programmes, governance and training relating to anti-money laundering and counter terrorist financing.

[30] Accountable institutions, as defined in the Act, are statutorily required to identify risks, maintain compliance systems, keep records, and report prescribed information, in particular RMCPs and STRs, in pursuit of important public regulatory objectives. RMCPs demonstrate institutional compliance with the Act while STRs provide confidential intelligence concerning potentially unlawful financial activity.

[31] The effectiveness of financial intelligence gathering depends upon candid reporting and the assurance that the information will remain confidential. Confidentiality is accordingly central to the Act's regulatory design. It protects investigations, encourages compliance, safeguards third-party information and promotes the public interest in combating financial crime.

[32] The information required to be reported to the Centre by accountable institutions includes the private information of both the person or institution which creates the report, and that of the person or institution whose conduct is

being reported. STRs may contain untested suspicions concerning persons who are not parties to the litigation. Disclosure may cause significant reputational and privacy prejudice, notwithstanding that no wrongdoing has been established.

[33] If it is to achieve its purpose, the Act can only operate within a specialised confidentiality regime for information obtained through the financial intelligence system. This is because first, unrestricted disclosure would undermine the purposes for which the information was collected if those suspected of unlawful activities were to be tipped-off, and as a result abscond or dispose of their assets. Second, as the reports could invariably reveal personal information, the privacy of those reported on must be protected.[28] What is reported to the Centre might not necessarily be conclusive. If the information ordered to be disclosed is made available to the respondents, they can make them part of the court record, and the information will then be open to the public.[29]

[34] Consistent with and reinforcing the framework of confidentiality, the objectives of the Act, recorded in s 3(2)*(a)*, provide that the Centre is to make information collected by it available to a closed list of entities to facilitate the investigation of suspected unlawful activity. These entities are an investigating authority, the National Prosecuting Authority, an intelligence service, the South African Revenue Service, the Independent Police Investigative Directorate, the Intelligence Division of the National Defence Force, a Special Investigative Unit, the office of the Public Protector, an investigative division in an organ of state, a supervisory body or the investigative division of the Auditor-General. The section does not list persons in the position of the respondents.

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[28] The right to privacy is guaranteed by s 14 of the Constitution and protected in accordance with the provisions of the Protection of Personal Information Act 4 of 2013 (POPI) the national legislation envisaged in s 14 of the Constitution. POPI sets out the roles and responsibilities of those who are entitled to access such information, subject to certain prescribed criteria which provide the parameters within which private information may be disclosed.

[29] *City of Cape Town v South African National Roads Authority Limited and Others* [2015] ZASCA 58; 2015 (3) SA 386 (SCA); [2015] 2 All SA 517 (SCA); 2015 (5) BCLR 560 (SCA) para 19.

[35] Section 4, which prescribes the functions of the Centre, obliges it to inform, advise and co-operate with law enforcement and other government agencies in the identification and investigation of proceeds of crime and the combatting of money laundering and terrorist financing. Section 29(3) prohibits a person who makes a STR to the Centre, from disclosing information relating thereto to any person, including the person in respect of whom the report is made, other than in specified circumstances.

[36] The starting point in the interpretative exercise is to recognise that information reported to the Centre is confidential and is not to be disclosed except to specific entities expressly provided for. The question which the Equality Court was required to consider, was whether there was a right to disclosure in favour of the respondents, as a further exception to this guarded confidentiality framework. It is in that context that the text of s 40 and s 41, upon which the Equality Court relied, must be interpreted. Whether the text of these provisions creates an exception which permits disclosure, must be interpreted strictly, given the objectives of the Act. It was for the respondents to prove a lawful basis for disclosure consistent with the statutory purpose underlying the confidentiality regime of the Act.

[37] Section 40 deals with access to information held by the Centre. Section 41 provides for the protection of confidential information. Read in context, 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.

[38] At the time the application was heard by the Equality Court, s 40(1) read as follows:

‘(1) Subject to this section, the Centre must make information reported to it, or obtained by it under this Part and information generated by its analysis of information so reported or obtained, available to –

(a) an investigating authority in the Republic;

(*a*A) the National Prosecuting Authority;

(*a*B) the Independent Police Investigative Directorate;

(*a*C) an intelligence service;

(*a*D) the Intelligence Division of the National Defence Force;

(*a*E) a Special Investigating Unit;

(*a*F) an investigative division in an organ of state;

(*a*G) the Public Protector;

(*a*H) the South African Revenue Service; or

(b) an entity outside the Republic performing similar functions to those of the Centre, or an investigating authority outside the Republic;

(c) . . .

(d) a supervisory body;

(e) a person who is entitled to receive such information in terms of an order of a court; or

(f) a person who is entitled to receive such information in terms of other national legislation.

(1A) Information contemplated in subsection (1) may only be made available to an entity referred to in subsection *(a) (a*A*), (a*B*), (a*C*), (a*D*), (a*E*), (a*F*), (a*G*),* or *(a*H*)* –

(a) at the initiative of the Centre or at the request of an authorised officer of the entity; and

(b) if the Centre reasonably believes such information is required to investigate suspected unlawful activity.

(1B) Information contemplated in subsection (1) may only be made available to an entity or authority referred to in subsection (1)*(b)* –

(a) at the initiative of the Centre or at the request of the entity or authority; and

(b) if the Centre reasonably believes such information is relevant to the identification of the proceeds of unlawful activities or the combating of money laundering or financing of terrorist and related activities or similar offences in the country in which the entity or authority is established.

(1C) Information contemplated in subsection (1) may only be made available to a supervisory body referred to in subsection (1)*(d)* –

> *(a)* at the initiative of the Centre or at the request of the supervisory body; and
>
> *(b)* if the Centre reasonably believes such information is relevant to the exercise by the supervisory body of its powers or performance by it of its functions under any law.[30]

[39] In terms of s 40(1) the Centre 'must' make information reported to it, and information generated by its analysis of such information, available to the listed entities, which, in turn, have a concomitant right to receive the information. But this entitlement is confined to the list of entities. The list does not include a category of persons such as the respondents engaged in private litigation against the Centre, who seek to secure evidence which they hope may help them to prove their allegations.

[40] Further, although s 40(1) provides that information must be made available to these entities, it is significant that the information may only be made available to the entities referred to in s 40(1) *(a)*, *(a*A*)*, *(a*B*)*, *(a*C*)*, *(a*D*)*, *(a*E*)*, *(a*F*)*, *(a*G*)*, or *(a*H*)* if certain additional requirements prescribed in s 40(1A)[31] are satisfied: the disclosure must be at the initiative of the Centre or at the request of an authorised officer of the entity, and the Centre must reasonably believe that such information is required to investigate suspected unlawful activity. This provides further protection of the information against inappropriate disclosure, even where the disclosure is to the investigating authorities and supervising bodies listed in s 40(1), who are entitled thereto.[32]

[41] Similar to s 40(1A), s 40(2)[33] also imposes an additional procedural requirement. A request for information contemplated in subsection (IA) or (IC)

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[30] In 2022 the Act was amended with effect from 31 December 2022, to substitute s 40(1)(*a*F) and to include s 40(1)(*a*I), the latter adding 'the investigative division of the Auditor-General' as an entity to the list.
[31] Section 40(1A) is quoted above in paragraph 38.
[32] See generally De Koker *et al*, *South African Money Laundering and Terror Financing Law*, Chapter 5 Access to Information held by the FIC para 5.10.
[33] Section 40(2) of the Act provides:

must be in writing and must specify the required information and the purpose for which the information is required.

[42] In explaining the objective and rationale behind s 40, Hlongoane states:

'The above section guarantees that access to information can be accessible without limitation for as long as the required procedures of accessing the information are adhered to by the authorised officer. Section 40 further provides for safety measures where it states that not only information would be given as and when the information is requested but strict procedures have to be followed and adequate reasons given. The section also adds emphasis by clearly setting out who specifically is entitled to access of information in terms of this section'.[34]

[43] The Equality Court relied on s 40(1)*(e)*, which provides that information must be made available to 'a person who is entitled to receive such information in terms of an order of a court', as affording the basis of a general entitlement to disclosure of the confidential information held by the Centre. There would be no need for the procedures governing and restricting access to information in respect of the listed entities and bodies, as provided in s 40(1A) and s 4(2), if a general right to such information existed in terms of s 40(1)*(e)*, which could be granted in favour of anyone, not restricted or qualified by s 40(1A) or s 40(2), but simply requiring that a court orders disclosure.

[44] Section 41 regulates the protection of confidential information held by or obtained from the Centre. It provides:

'No person may disclose confidential information held by or obtained from the Centre except –

(a) within the scope of that person 's powers and duties in terms of any legislation;

(b) for the purpose of carrying out the provisions of this Act;

'(2) A request for information contemplated in subsection (1A) or (1C) must be in writing and must specify the required information and the purpose for which the information is required.'

[34] K K M Hlongoane, LLM Thesis, *Access to Information held by the Financial Intelligence Centre*, page 14 https://repository.up.ac.za/bitstreams/9fa3229e-d173-4052-af56-4eee2e3f94704/download.

(c) with the permission of the Centre;

(d) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or

(e) in terms of an order of court.'

The Equality Court placed reliance on s 41*(d)* and *(e)*.

[45] The text of s 41 does not confer an entitlement on third parties to receive confidential information from the Centre. It caters for the situation where a person is or has come into the possession of confidential information, which is either held by or had been obtained from the Centre. Such a person may not disclose the information except if authorised by a court order. Section 41 does not find application on the facts of this appeal.

[46] As regards s 40(1)*(f)*, the Equality Court did not rely on the provisions thereof and rightly so, as the respondents did not contend for any entitlement to receive the information in terms of national legislation. There was no suggestion as to what that national legislation might be.

[47] Any entitlement to the disclosure claimed by the respondents could therefore 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.

[48] A pertinent example would be where, in terms of the Uniform Rules of Court, discovery of a confidential document is claimed in litigation which has already commenced, but the disclosure thereof is resisted on the grounds that it would violate the scheme of confidentiality and the express prohibitions against disclosure in the Act. If a court was to conclude, in that instance, that the

confidentiality of the information should yield to disclosure and the document should be discovered, the Centre will have to make the information available if directed by a court order. The court order would simply give effect to the right to discovery of the document(s) and the information contained therein. That is irrespective of whether conditions are attached to the disclosure.[35] A right to such information might also arise in other instances, but it is beyond the scope of this judgment to identify all such further instances where s 40(1)*(e)* might find application. The jurisprudence in this regard is best left to a case-by-case development.

[49] Considerations of relevance might be necessary in determining whether a court order based on a right to disclosure, for example in the context of discovery, should be granted. But relevance *per se* (of itself) does not create the right. The proper enquiry is whether the Act permits disclosure in the circumstances presented, and not simply whether the documents might be relevant to pending litigation.[36]

[50] The Equality Court's reasoning that it could compel disclosure of the confidential information merely because fairness required it, conflated the limited statutory exceptions with a judicial power to order disclosure. By starting with the respondents' alleged need for access to the documents, rather than the statutory limitations governing disclosure, the Court effectively created a disclosure mechanism not contemplated by the Act.[37] It moved from relevance to disclosure without first determining whether the statutory threshold for

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[35] Although protective measures such as confidentiality undertakings or restricted access are important and can be imposed in terms of s 40(3) of the Act, they regulate the manner of disclosure and cannot create a legal entitlement where none exists. See *Mazibuko and Others v The City of Johannesburg and Others* [2009] ZACC 28; 2010 (4) SA 1 (CC); 2010 (3) BCLR 239 para 73.

[36] *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services (Freedom of Expression Institute as Amicus Curiae) In re: Masetlha v President of the Republic of South Africa and Another* [2008] ZACC 6; 2008 (5) SA 31 (CC); 2008 (8) BCLR 771 (CC) paras 39-45.

[37] M*inister of Defence and Military Veterans v Motau* [2014] ZACC 18; 2014 (8) BCLR 930 (CC); 2014 (5) SA 69 (CC) paras 40-42.

disclosure had been satisfied. That approach converted confidential regulatory information into ordinary litigation material, contrary to the purpose and structure of the Act.

[51] Confidentiality safeguards the effectiveness of financial intelligence reporting, protects accountable institutions and third parties, and preserves the integrity of ongoing investigations. Those interests extend beyond the immediate parties and required that greater weight be accorded thereto than the Equality Court afforded them.

[52] The respondents' interpretation would substantially alter the statutory role of the Centre by transforming it into an alternative source of possible litigation documents. That is inconsistent with the legislative purpose of the Centre to collect and analyse confidential financial intelligence for regulatory and law-enforcement purposes. The Centre is not a repository of discoverable information.[38] Permitting disclosure outside the circumstances contemplated by the Act would undermine the statutory reporting framework. It would impair the effective functioning of the financial intelligence system and would defeat the objectives of the Act. Equality rights do not automatically override statutory confidentiality protections enacted for legitimate public purposes.

The Oakbay judgment

[53] The Equality Court relied on the judgment in *Minister of Finance v Oakbay Investments* (*Oakbay*),[39] as support for the thesis that s 40(1)*(e)* of the Act creates a right for persons, in the position of the respondents, who are not listed in s 40(1), to receive information held by the Centre. *Oakbay* is not authority for that proposition. In *Oakbay* the Minister of Finance applied to court

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[38] Sections 2 and 3 of the Act.
[39] *Minister of Finance v Oakbay Investments (Pty) Ltd and Others; Oakbay Investments (Pty) Ltd and Others v Director of the Financial Intelligence Centre* [2017] ZAGPPHC 576; [2017] 4 All SA 150 (GP); 2018 (3) SA 515 (GP).

for declaratory relief against entities in the *Oakbay* group and associated individuals. Attached to the Minister's affidavit was a certificate by the Centre setting out STRs which banks had communicated to the Centre in respect of transactions involving *Oakbay*. *Oakbay* sought an order compelling the disclosure of information relating to reports made to the Centre by its erstwhile bankers, premised on s 40(1)*(e)* of the Act. This relief was conditional on its application for striking out the reference to the STR's and the paragraphs in the Minister's affidavit, not succeeding. If it did, then *Oakbay* tendered the withdrawal of its disclosure application.

[54] The relevant paragraphs in the Minister's founding affidavit and the reports were struck out and *Oakbay* withdrew its application seeking to compel disclosure. The Court was simply not called upon to decide whether the application was well-founded in law, and it did not do so.

The non-joinder of affected parties

[55] A court will not make an order which may directly and prejudicially affect people's rights, without giving them an opportunity to be heard.[40] The test for non-joinder[41] is whether the absent party has a direct and substantial interest that may be prejudicially affected by the order.

[56] The order of the Equality Court also granted relief pertaining to information of Sekunjalo Investment Holdings (Pty) Ltd and entities listed in annexure 'A' to the Notice of Motion. It also affected the rights of various other individuals and entities, including EOH Holdings and its subsidiaries, KPMG Services (Pty) Limited, South Africa, Steinhoff International Holdings NV and

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[40] *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 651; *Ex parte Body Corporate of Caro1ine Court* 2001 (4) SA 1230 (SCA); [2002] 1 All SA 49 (A) para 9.

[41] *Amalgamated Engineering Union* fn 41 at 659-660 and reaffirmed in *Gordon v Department of Health, Kwazulu-Natal* [2008] ZASCA 99; 2008 (6) SA 522 (SCA); [2009] 1 All SA 39 (SCA); 2009 (1) BCLR 44 (SCA); [2008] 11 BLLR 1023 (SCA); (2008) 29 ILJ 2535 (SCA). Also referred to in *Pheko and Others v Ekurhuleni City* [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC) para 56.

Tongaat Hulett Development. And it affected the interests of ABSA, FNB, Nedbank, Investec and Standard Bank. The banks have a direct and substantial legal interest in the confidentiality of the documents they submit to the Centre.[42] They ought therefore to have been joined as parties before any order affecting their rights was granted.

[57] Apart from requiring the Centre to provide specified reports which the banks had submitted to it, the respondents also sought an order directing the Centre to provide them with STRs submitted by 'accounting institutions' (probably meaning 'accountable institutions' as that is the term used in the Act) for the last five years in respect of the six respondents and Sekunjalo. The term 'accountable institution' comprises a very large number of entities, listed in Schedule I to the Act. It includes attorneys, boards of executors, trust companies, estate agents, banks, long-term insurers, dealers in foreign exchange, persons who carry on the business of lending money against securities, persons who carry on licensed gambling activities, financial service providers, money remitters, and others. These institutions would also be affected by the order.

[58] The Equality Court reasoned in its judgment granting leave to appeal that:

'The submission that [the Centre] was required by the order to recklessly deliver the information to the applicants in the main application and/or the Registrar, and thus exposing the information to publicity, as a public record, is simply far-fetched. A reading of section 41 together with 41A makes it clear that information disclosed remains under FIC control, even though not in its possession. . . .

…

Fairness demands in my view, that the FIC make its own decisions in the interests of justice, without other interest groups competing for the steering wheel of the direction its decisions on disclosure should take. The question of non-joinder, in my view, required these considerations.'

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[42] *Bowring NO v Vrededorp Properties CC* [2007] ZASCA 80; 2007 (5) SA 391 (SCA).

[59] These sentiments offer no consolation to affected institutions not joined and cited as respondents in the disclosure application, because the protection of their legal interest would be left to the view which the Centre might adopt regarding information they had submitted. If ordered to be disclosed, the Centre would have no discretion in any event to withhold disclosure of what was ordered to be disclosed. The respondents' argument that joinder was unnecessary because the order was directed only at the Centre, confuses custody with legal interest. The Centre's possession of the documents did not extinguish the continuing confidentiality and commercial interests of the accountable institutions.[43]

[60] Nor did Nedbank and ABSA's intervention and participation on appeal cure the defect left by their non-joinder.[44] Procedural fairness requires that parties whose interests are directly affected be heard before an order is made. The failure to join the affected parties was a material procedural irregularity which undermined the validity of the disclosure order.[45] Their absence deprived the Equality Court of evidence regarding the sensitivity of the documents; the prejudice which disclosure, if otherwise competent, would cause; and whether narrower relief could have been fashioned.[46] On this ground too, the application ought to have been dismissed and the appeal must succeed.

***Locus standi in iudicio*: the Sekunjalo-related documents and Nedbank – a fishing expedition**

[61] The respondents were granted an order which extended to documents in respect of or by affected parties, *inter alia* the Sekunjalo group and Nedbank, without the respondents establishing a legal interest in their disclosure. They

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[43] *Gordon v Department of Health, KwaZulu-Natal* [2008] ZASCA 99; 2008 (6) SA 522 (SCA); [2009] 1 All SA 39 (SCA); 2009 (1) BCLR 44 (SCA); [2008] 11 BLLR 1023 (SCA); (2008) 29 ILJ 2535 (SCA) (*Gordon*) para 9.
[44] *Ibid* paras 9-10.
[45] *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) (*Amalgamated*) at 650.
[46] *Amalgamated* at 659-662.

failed to explain why documents concerning the Sekunjalo group's affairs would be relevant to their own claims. And in relation to Nedbank specifically, the requested documents bore no connection to the respondents' claims. Notably, the respondents had no banking relationship with Nedbank. It would therefore not have taken decisions affecting the respondents, nor would its confidential records establish discriminatory treatment vis-à-vis- the respondents.

[62] The respondents sought the confidential information in broad and general terms in the hope that something useful might emerge and that the respondents might uncover information supporting their allegations, precisely the type of fishing expedition that is not allowed.[47] Disclosure, like discovery, is not an investigative tool to search for a cause of action or to uncover unspecified evidence. As recognised in *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others*[48] and *Unitas Hospital v Van Wyk*,[49] a litigant must identify a proper factual and legal basis for the documents sought. The Equality Court erred in ordering disclosure of this information without establishing such standing.

Conclusion

[63] The principle established by this appeal is limited, but it is an important one.[50] Confidential information obtained and held by the Centre pursuant to the

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[47] As recognised in *Moulded Components and Rotomoulding South Africa (Pty) Ltd v Coucourakis and Another* 1979 (2) SA 457 (W); This is what this Court cautioned against in *Unitas Hospital v Van Wyk* 2006 (4) SA 436 (SCA); [2006] 4 All SA 231, *Tetra Mobile Radio (Pty) Ltd v MEC, Department of Works, and Others* [2007] ZASCA 128; [2007] SCA 128 (RSA); 2008 (1) SA 438 (SCA) and reaffirmed by the SCA in *MV Smart: Minmetals Logistics Zhejiang Co Ltd v Owners and Underwriters of MV Smart and Another* [2024] ZASCA 129; 2025 (1) SA 392 (SCA); [2025] 1 All SA 60 (SCA), discovery and disclosure mechanisms are intended to facilitate the fair determination of identified disputes, not to enable speculative searches for evidence in the hope that a cause of action or defence may emerge. This is what this Court cautioned against in *Unitas Hospital v Van Wyk* 2006 (4) SA 436 (SCA); [2006] 4 All SA 231 (SCA) para 9.

[48] *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) at 326J.

[49] *Unitas Hospital v Van Wyk and Another* 2006 (4) SA 436 (SCA); [2006] 4 All SA 231 (SCA) para 21.

[50] This judgment does not suggest that information held by the Centre is immune from judicial scrutiny. The courts retain the power, in appropriate circumstances and, where authorised by law, to direct disclosure of confidential information after conducting a careful balancing exercise between the competing interests of confidentiality, fairness, access to justice and the proper administration of justice.

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.[51]

Costs

[64] The Centre seeks the costs of the appeal. Nedbank and ABSA do not seek to recover the costs of the appeal.

[65] The respondents had motivated for an overbroad order, to which they were not entitled, fishing for information to which they did not establish a right. This amounted to an abuse of process. They persuaded the Equality Court to accede to this relief, resulting in a judgment which is legally untenable.

[66] No truly constitutional issue, as contemplated in *Biowatch*,[52] arose. The appeal principally concerned the interpretation of the Act and the protection of confidential regulatory information. The Centre, Nedbank and ABSA were justified in seeking appellate clarification.

[67] 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

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[51] *Competition Commission v ArcelorMittal South Africa Ltd and Others* [2013] ZASCA 84; [2013] 3 All SA 234 (SCA); 2013 (5) SA 538 (SCA); [2013] 1 CPLR 1 (SCA) paras 31-37.

[52] *Biowatch Trust v Registrar, Genetic Resources and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 paras 16-24.

correction on appeal. There are no circumstances warranting a departure from the general principle that costs should follow the result.

Order

[68] The following order is granted:

1 The appeal is upheld.

2 The respondents jointly and severally are directed to pay the costs of the appellant, the Financial Intelligence Centre, such costs to include those of two counsel where so employed.

3 The order of the Equality Court is set aside and substituted with the following order:

‘The application is dismissed with costs, including those of two counsel where so employed, on scale C.’

P A KOEN
JUDGE OF APPEAL

Appearances

For appellant:	L Kutumela (The heads of argument were prepared by G Budlender SC and L Kutumela)
Instructed by:	Werksmans Attorneys, Cape Town Symington De Kok Attorneys, Bloemfontein
For the first intervening party:	A Cockrell SC (with him M Mbikiwa)
Instructed by:	Edward Nathan Sonnenbergs, Cape Town Mayet & Associates, Bloemfontein
For the second intervening party:	F Ismail SC (with him M Kritzinger)
Instructed by:	Webber Wentzel, Cape Town Mayet & Associates, Bloemfontein.