

[TO BE PUBLISHED BY THE FSCA]

Case No: 1898

In the matter between:

The Financial Sector Conduct Authority

And

Mr Jouzef Thomas Mabhena

Mr Thabo Klaas Nkoana

Elexzla Group (Pty) Ltd

**ENFORCEABLE UNDERTAKING IN TERMS OF SECTION 151(1) OF THE FINANCIAL
SECTOR REGULATION ACT, 2017**

DEFINITIONS

1. For purposes of this undertaking, the following definitions shall apply:
 - 1.1. **"Ababhuti Funeral Palour"** means **Elexzla Group (Pty) Ltd t/a Ababhuti Funeral Palour** a private company with limited liability, duly incorporated and registered in accordance with the company laws (*Companies Act No. 71 of 2008, as amended*) of the Republic of South Africa, under registration number 2022/384929/07, with its principal place of business situated at 2495 Vezubuhle, Kwa-Mhlanga, Mpumalanga, 1022.
 - 1.2. **"Effective Date"** means the date on which this undertaking becomes enforceable which is upon signature by a duly authorised officer acting on behalf of the Authority.
 - 1.3. **"Enforceable Undertaking"** means this undertaking duly signed and concluded between the Authority, Ababhuti Funeral Palour, Nkoana and Mabhena.

- 1.4. **"FAIS Act"** means the Financial Advisory and Intermediary Services Act No. 37 of 2002, as amended.
- 1.5. **"The Authority"** means the Financial Sector Conduct Authority.
- 1.6. **"FSR Act"** means the Financial Sector Regulation Act No. 9 of 2017, as amended.
- 1.7. **"Mabhena"** means **Mr Jouzef Thomas Mabhena**, a director of Ababhuti Funeral Palour.
- 1.8. **"Nkoana"** means **Mr Thabo Klaas Nkoana**, a director of Ababhuti Funeral Palour.
- 1.9. **"Tribunal"** means the independent Financial Services Tribunal, a statutory body established in terms of section 219 of the FSR Act, with its principal place of business at Kasteel Office Park, Orange Building, 546 Jochemus street, Erasmuskloof, Pretoria, Gauteng.

COMPLAINT

2. The Authority is the market conduct regulator of financial institutions that are licensed in terms of a financial sector law. The Authority is empowered by the FSR Act to supervise and enforce compliance with financial sector laws.
3. The Authority received information that Ababhuti Funeral Palour issued funeral policies without having an underwriter, which is a contravention of section 5 of the Insurance Act 18 of 2017 (the Insurance Act) and section 7(1) of the Financial Advisory and Intermediary Services Act 37 of 2004 (FAIS Act).

INVESTIGATION AND CONTRAVENTIONS

4. The Authority commenced an enquiry into the conduct of Ababhuti Funeral Palour, Nkoana and Mabhena, as empowered by section 131(1)(a) of the FSR Act. The enquiry was to determine whether there was a reasonable suspicion of contraventions of:
 - 4.1. Section 7(1) of the FAIS Act which states that a person may not act or offer to act as a financial services provider unless such person has been issued with a license under section 8, or, unless such a person has been appointed

as a representative of an authorised financial services provider under section 13; and

- 4.2. Section 5(1) of the Insurance Act which states that no person may conduct insurance business in the Republic unless that person is licensed under the Act.
5. Nkoana and Mabhena, in their capacities as directors of Ababhuti Funeral Palour, caused and/or permitted Ababhuti Funeral Palour to issue funeral policies without having a licensed underwriter. Nkoana and Mabhena further advised and collected premiums and processed claims on behalf of policyholders.
6. Nkoana and Mabhena did not dispute their knowledge and/or involvement in the conduct of Ababhuti Funeral Palour and as a result, they caused and/or permitted the contraventions of sections 7(1) of the FAIS Act and 5(1) of the Insurance Act. Ababhuti Funeral Palour and Nkoana and Mabhena have admitted all the contraventions.

ENFORCEABLE UNDERTAKING

7. Ababhuti Funeral Palour and Nkoana and Mabhena give the following Enforceable Undertaking to the Authority in terms of section 151(1) of the FSR Act:
 - 7.1. They will ensure that at all relevant times their clients' insurance business is placed with a licensed underwriter; and
 - 7.2. They will ensure that at all relevant times Ababhuti Funeral Palour and its representatives are appointed as a representative of an authorised financial services provider under section 13 of the FAIS Act.

NON-COMPLIANCE WITH THE UNDERTAKING

8. Ababhuti Funeral Palour, Nkoana and Mabhena understand that if any term contained in this Enforceable Undertaking is breached or contravened, the Authority:
 - 8.1. may impose an administrative penalty against Ababhuti Funeral Palour, Nkoana and/or Mabhena on the basis of joint and several liability;
 - 8.2. may debar Ababhuti Funeral Palour, Nkoana and/or Mabhena; and/or

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8.3. may approach the Tribunal to make certain orders in respect of the Enforceable Undertaking.

9. Ababhuti Funeral Palour, Nkoana and/or Mabhena acknowledge that they are familiar with all the provisions of section 151 of the FSR Act.

DATED AT FSCA
09 ON THIS 09 DAY OF March 2023.



Mr Nkoana

and Mabhena

(On behalf of Ababhuti Funeral Palour)



Mr Jouzer Thomas Mabhena

(In his personal capacity)



Mr Thabo Klaas Nkoana

(In his personal capacity)

The aforesaid Enforceable Undertaking is accepted by the Financial Conduct Authority in terms of section 151(1) of the Financial Sector Regulation Act, 2017

DATED AT PRETORIA ON THIS 28TH DAY OF JUNE 2023.



Gerhard van Deventer

(For the Authority)