

TO BE PUBLISHED BY THE FSCA

Case No: 2135

In the matter between:

The Financial Sector Conduct Authority

And

Mr Juliam Thabo Banda

Khulana Funeral Directors (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. **"Khulana"** means **Khulana Funeral Directors (Pty) Ltd**, 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 2014/054158/07, with its principal place of business situated at 3 Mphike Street, Moseleke Section, Katlehong.
 - 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.

Executive Committee:

Commissioner: U. Kamlana **I Deputy Commissioners:** A. Ludin I K. Gibson I F. Badat

- 1.3. **"Enforceable Undertaking"** means this undertaking duly signed and concluded between the Authority and Khulana.
- 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. **"Banda"** means Mr Juliam Thabo Banda, a director of Khulana.
- 1.8. **"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 or required to be licenced in terms of financial sector laws. The Authority is empowered by the FSR Act to supervise and enforce compliance with financial sector laws.
3. The Authority received information that Khulana issued funeral policies without having a licenced insurer, which is a contravention of section 5 of the Insurance Act 18 of 2017 (the Insurance Act).
4. Banda has confirmed that from October 2022 to January 2023, Khulana advised a total of 30 clients, collected a total amount of R7 800 in premiums and settled a total number of 30 claims valued at R280 000.
5. Banda further confirmed that the 540 clients/policyholders of Khulana are currently not placed with any licensed insurer.

INVESTIGATION AND CONTRAVENTIONS

6. The Authority commenced an enquiry into the conduct of Khulana and Banda, as empowered by section 135(1)(a) of the FSR Act. The enquiry was in respect of their conduct during the period 01 January 2020 to 31 March 2023, to determine whether there was a reasonable suspicion that the aforementioned persons contravened:
 - 6.1. 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
 - 6.2. 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.
7. During the period from October 2022 to May 2023, Banda, caused and/or permitted Khulana to issue funeral policies without having a licensed insurer. Banda further caused and/ or permitted Khulana to collect premiums and processed claims in respect of Khulana's policy holders.
8. Banda did not dispute his knowledge and/or involvement in the conduct of Khulana and as a result, he caused and/or permitted the contraventions of sections 7(1) of the FAIS Act, 5(1) of the Insurance Act. Khulana and Banda have admitted all the contraventions.

ENFORCEABLE UNDERTAKING

9. Khulana and Banda, tender the following Enforceable Undertaking to the Authority in terms of section 151(1) of the FSR Act.
 - 9.1. They will regularise their business within 90 days from the date of signing this Enforceable Undertaking; and
 - 9.2. They will ensure that at all relevant times their clients' insurance business is placed with a licensed insurer.

NON-COMPLIANCE WITH THE UNDERTAKING

10. Khulana Funeral Directors and Banda, understands that if any term contained in this Enforceable Undertaking is breached or contravened, the Authority:
- 10.1. may impose an administrative penalty against Khulana and Banda, on the basis of joint and several liability;
 - 10.2. may debar Khulana and Banda; and/or
 - 10.3. may approach the Tribunal to make certain orders in respect of the Enforceable Undertaking.
11. Khulana and Banda, acknowledge that they are familiar with all the provisions of section 151 of the FSR Act.

DATED AT 15 ALENHONG ON THIS 15 DAY OF MAY, 2023.



Mr Juliam Thabo Banda

(On behalf of Khulana Funeral Directors)



Mr Juliam Thabo Banda

(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.

A handwritten signature in black ink, appearing to read 'Gerhard van Deventer', written over a horizontal line.

Gerhard van Deventer

(For the Authority)