Financial Services Tribunal

In the matters of:

A31/2025

HAREL ADAM SEKLER	First Applicant
WARWICK DAVID SNEIDER	Second Applicant
MANUEL DE ANDRADE	Third Applicant
HENRY SIMPSON	Fourth Applicant

and

THE FINANCIAL SECTOR CONDUCT AUTHORITY	Respondent

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A32/2025

BANXSO (PTY) LTD	Applicant

and

THE FINANCIAL SECTOR CONDUCT AUTHORITY	Respondent

Tribunal panel: LTC Harms (chair), Adv G Goedhart SC and Adv W Ndinisa

For the applicants: Adv J Muller SC and B Prinsloo instructed by Hanekom Attorneys Inc

For the respondent: Mr B Bredenkamp

Hearing date: 8 December 2025

Decision date: 11 December 2025

Subject: Reconsideration application – locus standi - meaning of 'person aggrieved' – separation of issues

DECISION

1. This decision deals with the consolidated hearing of the two matters referenced in the heading. They are applications for the reconsideration of a final withdrawal of the authorisation of Banxso (Pty) Ltd as a financial service provider in terms of sec 9(4) of the Financial Advisory and Intermediary Services Act 9 of 2017 ('the FAIS Act') by the respondent, the Financial Sector Conduct Authority ('the FSCA').
2. Applications for reconsideration of decisions of, inter alia, the FSCA by this Tribunal are regulated by the Financial Sector Regulation Act 9 of 2017 (secs 230 to 236).
3. Banxso's licence was provisionally withdrawn on 15 October 2024, which meant that it could no longer provide financial services. Banxso did not apply for reconsideration of the decision nor did it apply for suspension of the decision under sec 231.
4. Banxso provided the FSCA with its submission as to why the licence should not be withdrawn, but the FSCA nevertheless, on 4 July 2025, withdrew the licence

finally because of its view that Banxso had contravened financial sector laws in a material manner and that it no longer met the fit and proper requirements to be a financial service provider. Its reasons, which have been spelt out in detail, do not require further attention for present purposes.

5. On 22 August 2025, the High Court (Western Cape Division, Cape Town) placed Banxso under provisional liquidation with a return date of 17 October.
6. The return date was extended and the question of the final liquidation of Banxso has since been argued but a judgment has not been handed down.
7. It is known that a provisional liquidator was appointed who knows of the present proceedings but has not taken any steps to join the proceedings.
8. After the provisional liquidation order and on 2 September, the two reconsideration applications were simultaneously filed, both seeking on identical grounds the identical relief, namely a setting aside of the 4 July withdrawal of Banxso's licence, and a remittal to the FSCA for reconsideration (see sec 234(1)).
9. Instead of filing the record of the proceedings and further reasons (as required by the Tribunal rules) the FSCA filed an application for the summary dismissal under sec 234(4) of the two applications. It is unnecessary to deal with the detail of the application because, as I stated quite early during the hearing, we intend to deal with the issues as separated issues without necessarily invoking the summary procedure.
10. The determining issues are whether the applicants in the two applications have locus standi to launch the two applications. For that the record of the proceedings before the FSCA is not required, and to insist that without the record

having been filed we cannot decide the issues is without any merit. There is nothing that could be in the record which could create locus. The reliance on the rules of the Tribunal is misplaced. To adapt an old dictum: the rules are for the Tribunal and not the Tribunal for the rules.

11. There is nothing in any financial sector law or the rules of the Tribunal which prevents us from deciding these issues as separated issues especially if we follow the statutory dictate that proceedings are to be conducted with as little formality and technicality, and as expeditiously, as the requirements of the financial sector laws and the proper consideration of the matter permit (sec 232(1) and (2)).
12. In this context the facts and ruling in *S v Malind*e 1990 (1) SA 57 (AD) are illuminating and, based on the foregoing paragraph, apply to present case mutatis mutandis.
13. We sought to comply with PAJA, allowing the applicants a full hearing on the issues and by having regard to any information that is relevant to the issues at hand.

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14. We deal first with the Banxso application. It is said to have been launched by Banxso in its own name, despite being under provisional liquidation.
15. It cannot be doubted that application A 31/2025 would not have been launched had it not been of the provisional liquidation order.
16. Mr Sekler's case is that the decision had the effect of depriving Banxso of its FSP licence, "which was an asset held by Banxso, and the ability of Banxso to conduct its trade."

17. One need not rely on his statement for these self-evident facts.

18. If a company is under provisional liquidation the 'company' *eo nomine* or the shareholders or directors do not have any control over the assets of the company. Those fall under the provisional liquidator who must act on the instructions of the Master or those of the creditors.

19. The residual powers of the company, directors and shareholders, such as to oppose the liquidation order, relate to the status of the company. They may, additionally, obtain an order against the provisional liquidator to take steps to protect the assets of the company but they cannot act in the name of or for the company in relation to its assets.

20. The question of the (non-)joinder of the provisional liquidator was raised but the answer is that someone without locus cannot join another party to impart locus; nor does the failure of a third party to join proceedings.

21. We therefore conclude that the Banxso application stands to be dismissed because of lack of legal standing.

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22. We proceed to consider the application of the individual applicants and quote from the application setting out their locus standi to apply for reconsideration of the Banxso decision.

> The applicants are individuals ("the individual applicants") who <u>are materially affected by the decision and aggrieved by the decision</u> (underlining added)<u>.</u> Underlying the decision are material and final determinations of facts of financial sector law contraventions,

affecting those specific individuals. Those individuals were not heard before these final determinations were made.

The first applicant is the sole shareholder of Banxso (Pty) Ltd ("Banxso"). The decision has had the effect of depriving Banxso of its Financial Services Provider license, which was an asset held by Banxso, and the ability of Banxso to conduct its trade. As the sole shareholder and beneficiary of Banxso's Financial Services license and trade, the first applicant's legal rights have been affected. The remaining applicants are people who operate within the financial services sector. These findings underpin the Authority's intention to proceed with a debarment of the applicants, which infringes their right to freedom of trade. The applicants accordingly have the right to challenge the factual determinations made by the Authority.

23. To contextualise the last two sentences, on 12 May 2025, the FSCA issued a notice directed at the individual applicants and Banxso, informing them of the FSCA's *prima facie* findings of contraventions of a financial sector law and its intention to:

    a. debar the key persons for 30 years each,

    b. impose a R2 billion penalty on Banxso and Messrs Sekler and Sneider, jointly and severally,

    c. impose a further R16 million penalty on Banxso,

    d. impose a R20 million penalty on Mr de Andrade, and

e. impose a R8 million penalty on Mr Simpson.

This decision was pending at the date of the hearing of this application.

24. The sentences implied more and that is that the motive behind the application was to delay any decision by the FSCA on this notice. But whatever the motive, it became public knowledge late on the next day, 9 December, that the intended debarment and penalties were indeed given effect to and imposed.[1]

25. This interposition by the FSCA does not affect our decision on the locus of the individual applicants because locus is determined at the inception of the process.

26. As the underlined words indicate, the question is whether each is or was, individually, 'a person aggrieved by the decision' who may, in terms of sec 230(1)(a) apply for the reconsideration of a 'decision', in this case by the FSCA.

27. The term 'decision' is defined with reference to a 'specific person' (sec 218(a)) and because a person who is aggrieved is not said to be the specific person, counsel submitted that a decision against person A may be the subject of an application for reconsideration by person B. That is conceivable, if person B is 'aggrieved' in the sense discussed below. If it were to allow anyone who feels aggrieved in the general sense of being unhappy or may suffer a loss, it would obviously mean that every shareholder, debtor or creditor of A could apply for reconsideration – something counsel did not submit.

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[1] https://www.fsca.co.za/News%20Documents/FSCA%20Press%20Release%20-The%20FSCA%20takes%20regulatory%20action%20against%20Banxso%20(Pty)%20Ltd%20and%20its%20Key%20Persons.pdf.

28. The use of the term ‘specific person’ performs another function in sec 218(a). In this regard some dicta in Hollenbach require reconsideration.[2] The Act draws a distinction between decisions of a general (policy) nature and those directed at a specific person. The Tribunal does not reconsider administration, policy, rules or regulations, but only decisions directed at a particular individual. Consequently, the use of ‘specific person’ was not intended to qualify the requirement of ‘person aggrieved’ and there is no reason to assume that the legislature did not intend to use the latter term in its accepted sense.

29. That brings us to the meaning of ‘person aggrieved’. The issue was dealt with in *Discovery Life Provident Umbrella Fund and Another v Financial Services Tribunal and Others* (132345/2023) [2025] ZAGPPHC 1118 (10 October 2025). Counsel re-argued most of the points Apart from being bound by the decision we respectfully agree that it applied and explained the judgment in *Francis George Hill Family Trust v South African Reserve Bank* 1992 (3) SA 91 (AD) correctly.

30. The first applicant’s interest is not legal but indirectly financial and falls squarely within the ambit of the Appellate Division’s judgment. The other applicants are in the position of witnesses who had not been called or whose evidence had been rejected in a matter in which they had an indirect financial interest, and which affected their reputation. The short answer is that the findings in Banxso do not bind them and had no legal effect on them personally because they were not parties to the matter. Their legal rights are affected by the separate investigation by (and recent decision of) the FSCA.

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[2] Michelle Hollenbach & The Financial Sector Conduct Authority, A7/2020.

CONCLUSION

31. Having concluded that the applicants in both matters did not have locus standi to launch the reconsideration applications, they are dismissed.

ORDER:

The applications are dismissed.

Signed om 11 December 2025 on behalf of the panel.

__*Sgd L T C Harms*_____
LTC HARMS (Chairperson)