



THE FINANCIAL SERVICES TRIBUNAL

CASE NO. JSE 2/2026

In a matter between:

BENGUELA GLOBAL FUND MANAGERS (PTY) LTD

Applicant

And

JSE LIMITED

First Respondent

MR PRICE GROUP LIMITED

Second Respondent

Tribunal Panel: LTC Harms J (chairperson), MF Legodi J (deputy chairperson) and DM Davis J

Appearance for Applicant: TRS Seroto instructed by Ngoepe Law Inc

Appearance for 1st Respondent: I Green SC and M Kruger instructed by Webber Wentzel

Appearance for 2nd Respondent: A Franklin SC and P Smith instructed by Bowman Gilfillan Inc

Date of hearing: 9 March 2026

Date of Decision:

Summary: Meaning of 'decision' in the Financial Sector Regulation Act 9 of 2017 – JSE Listing Requirements - exceptional circumstances for a costs order

DECISION

- 1 The applicant is Benguela Global Fund Managers (Pty) Ltd. It describes itself as a boutique investment management firm managing investment assets in domestic and global markets for retail and institutional clients and on behalf of its clients a shareholder of Mr Price Group Ltd ("Mr Price" of "the Group").
- 2 The first respondent is JSE Ltd, a licenced stock exchange under the Financial Markets Act 19 of 2012. It, accordingly, is a market infrastructure and financial institution as defined in the Financial Sector Regulation Act 9 of 2017 ('the FSR Act').
- 3 The second respondent, Mr Price Group Ltd (herein 'the Company'), is listed on the Johannesburg Stock Exchange and is an issuer of its securities.
- 4 The applicant itself is not a shareholder. It manages the shares of clients and 'holds' on their behalf a very small percentage of the securities/shares.
- 5 The Company is in the process of acquiring a foreign entity, namely the NKD group. The applicant, for many reasons, believes that the acquisition is not in the interest of its clients and of shareholders generally. It therefore is of the view that the acquisition should require shareholder approval, something that is only

required if such an acquisition is a Category 1 transaction under the Listing Requirements of the JSE.

6 The relevant requirements for categorisation read as follows:

9.3 Any issuer considering a transaction must, at an early stage, consider the categorisation of the transaction.

9.4 A transaction is categorised by assessing its size relative to that of the issuer proposing to make it and the listed holding company of such issuer, if applicable.

The comparison of size is made by the use of the percentage ratios set out in paragraph 9.6. The different categories of transactions are:

(a) Category 2 – a transaction where any percentage ratio is 5% or more but each is less than 30%;

(b) Category 1 – a transaction where any percentage ratio is 30% or more or if the total consideration is not subject to any maximum . . .

7 Of relevance is par 9.11:

The JSE will require transactions . . . entered into during the 12 months prior to the date of the latest transaction to be aggregated with the latest transaction for the purpose of determining the categorisation to apply to the latest transaction.

8 It is undisputed that the NKD transaction is, on its own, a Category 2 transaction and that, considering all transactions concluded during the 12 months prior to this transaction, it still is a Category 2 transaction.

9 Despite this, the applicant requested the JSE on 22 December 2025 to:

- Aggregate [‘old’] Mr Price acquisitions as a Category 1 transaction.

- Require Mr Price to seek shareholder approval for the NKD acquisition via a general meeting and circular, including proforma financial effects, fairness opinions, and risk assessments.
 - Suspend further implementation of the NKD acquisition pending review.
- 10 The JSE on the following day dismissed the request, noting that aggregation must be applied on a rolling 12-month basis and that the NKD transaction does not meet the aggregation principles specified in the Listing Requirements for classification as a Category 1 transaction.
- 11 That led to the present application for reconsideration (and not appeal or review as stated by the applicant) under sec 230(1) of the FST Act of the decision of the JSE just mentioned filed by the applicant on 12 January 2026. Lest there is any misunderstanding about the intentions of the applicant, we quote from the application:

We respectfully request that the Tribunal:¹

- Review the JSE's interpretation of "principal activities" in this matter;
- Determine whether the JSE correctly applied a substance-over-form assessment;
- Declare that Mr Price's acquisitions since 2021, taken together, result in substantial involvement in new business activities; and

¹ Underlining added for emphasis.

- Overtturn the JSE's decision [identified earlier as the decision of 23 December] and mandate the aggregation of Mr Price's 2021-2026 acquisition transactions under Section 9.13(c).
- Require the JSE to apply the Category 1 transaction requirements, including shareholder approval.
- Direct Mr Price to issue a Category 1 Circular and hold a General Meeting for a shareholder vote on its proposed acquisition of NKD.

12 The application did not follow the ordinary route as set out in the Tribunal's rules and the applicant proceeded as if it could make its own rules and adopt its own procedures.

13 Nevertheless, in its fourth affidavit, it conceded that the JSE's 'decision' not to aggregate was correct but it nevertheless asked for the decision to be set aside and that the Tribunal should remit the categorisation of the NKD transaction to the JSE with directions to:

- apply paragraph 9.7 of the Listings Requirements;
- consider the net asset value impact, the lease liabilities, the derivative exposures, and the geographic and operational changes; and
- determine whether the transaction should be re-categorised as Category 1, requiring a circular and shareholder approval.

14 For the sake of completeness, we quote par 9.7:

In circumstances where:

- either of the above calculations produces an anomalous result; and/or

- the JSE believes that any of the transaction components are not included at fair value (taking account of the particular circumstances of the transaction); and/or
- the categorisation calculations are inappropriate to the sphere of activity of the issuer;

the JSE reserves the right to request a fairness opinion on transaction values, take into account other ratios or use any other relevant indicators of size to determine the categorisation.

15 The case of the applicant as it developed is that the JSE failed to exercise its right to request a fairness opinion to determine the categorization of the acquisition and that since that failure appears from the papers as filed, the applicant is entitled to a reconsideration of the ‘decision’.

16 The argument fails at many procedural and substantive levels but we shall limit ourselves to the question of the Tribunal’s jurisdiction which is derived from sec 230(1)(a) of the FSR Act:

A person aggrieved by a decision may apply to the Tribunal for a reconsideration of the decision by the Tribunal in accordance with this Part.

17 The term ‘decision’ is defined in sec 218 and the relevant part reads as follows:

‘decision’ means —

a decision in relation to a specific person by a market infrastructure [the JSE], being a decision in terms of rules of the market infrastructure contemplated by the Financial Markets Act, or a decision contemplated in section 105 of the Financial Markets Act.

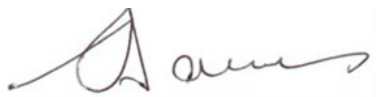
- 18 The Listing Requirements, under which the ‘decision’ was taken, are not the ‘rules’ or ‘exchange rules’ of the JSE. Such rules are mandated under sec 17 of the Financial Markets Act while the Listing Requirements are different and required by sec 11. These ‘decisions’ are also not decisions as contemplated in sec 105.
- 19 Counsel submitted that the Tribunal in earlier decisions relating to the JSE noted that the complainant in those matters had contravened Listing Requirements and that the Tribunal accordingly assumed jurisdiction. Those decisions were misunderstood. In all the matters the applications for reconsideration were based on sec 105 against a sanction (listed in sec 11(1)(g)) imposed by the JSE because of a breach of the Listing Requirements. To decide whether the sanction was legally imposed, the Tribunal was called upon to consider whether the Listing Requirements had been breached as a jurisdictional fact for the sanction.
- 20 Since the Tribunal does not have jurisdiction to reconsider the ‘decision’ or decisions’, the application must be dismissed.
- 21 That leaves for consideration the claim for costs by the Company on the basis that there are exceptional circumstances (sec 234(2)) present that justify such an order.
- 22 A useful test to apply is whether, in court proceedings, an order for attorney and client costs would have been appropriate. We hold that it would for the reasons that follow.

- 23 There is, firstly, the complete disregard of the rules of the Tribunal. The applicant, through a later affidavit, ascribed it to the fact that it had not used legal representation at the earlier stage of the application. That is not excuse because the rules are simple and the persons behind the applicant are highly qualified persons who understand ordinary English. When we pointed out to counsel that the first affidavit had said that the argument therein was based on legal advice, we were told that was wrong because the deponent had used a template to draw the affidavit. How much was taken from the template we do not know.
- 24 In addition, the applicant changed its case as the matter developed. As mentioned, it abandoned the basis of the application, namely the decision of 23 December, but still insisted that the Tribunal should set it aside.
- 25 Thirdly, the affidavits filed on behalf of the applicant were vexatious and scurrilous, based on hypotheses, and consisted of much that was irrelevant to the issues in the case. One example is the conscious and repeated attempt to smear the JSE and the Company and its directors with the Steinhoff fraud tarbrush. We do not intend to give further instances because they were highlighted during argument and are known to the applicant.
- 26 Last, it is again emphasised that the Tribunal does not reconsider administration, policy, rules or regulations, but only defined 'decisions' directed at a particular individual.

ORDER:

- (a) The application is dismissed.
- (b) The applicant is to pay the costs of the second respondent taxed in terms of the Uniform Rules applicable in the High Court, including the costs of two counsel under scale C.

Signed on 11 March 2026 on behalf of the Tribunal panel.

A handwritten signature in black ink, appearing to read 'LTC Harms', enclosed in a thin black rectangular border.

LTC Harms