THE FINANCIAL SERVICES TRIBUNAL

CASE NO. A15/2026

In a matter between:

LINDELANI SIGIDANE Applicant

and

FINANCIAL SECTOR CONDUCT AUTHORITY Respondent

TRIBUNAL PANEL: Judge LTC Harms (Chairperson), Adv W Ndinisa and Ms. Zama Nkubungu-Shangisa (Members)

For Applicant: In person

For Respondent Mr SR Rossow

Date of hearing: 27 May 2026

Date of Decision: 18 June 2026

Summary: Application in terms of section 234 of the Financial Sector Regulatory Act 9 of 2017 (FSR Act) – Points *in limine* – Tribunal lacks of jurisdiction – not "*a decision"* and not "*a person aggrieved by a decision"* - contemplated in sections 218 and 230 of the FSR Act.

DECISION

INTRODUCTION

1. The Applicant is Lindelani Sigidane, an erstwhile member-elect trustee of PRASA Provident Fund ("the Fund").

2. The Respondent is the Financial Sector Conduct Authority ("the Authority"), a regulatory body charged with, amongst others, functions to regulate and supervise the conduct of financial institutions in accordance with the financial sector laws.

3. The Applicant brought this application in terms of section 230 of the Financial Sector Regulation Act, 9 of 207 ("the FSR Act"). He challenges the decision of the Authority taken on 6 November 2025 to appoint an interim board of management ("the interim board") to the PRASA Provident Fund.

RELEVANT BACKGROUND

4. During October 2025, the then chairperson of the Fund requested an urgent and immediate intervention from the Authority. The reasons advanced by the chairperson is that the Fund is facing critical governance crisis which has resulted in operational standstill and severely prejudice the proper functioning of the Fund.

5. Further, he informed the Authority that the Fund is improperly constituted in terms of section 7A of the Pension Funds Act 24 of 1956 ("the Act"). The facts which gave rise to the critical governance crisis in the Fund are common cause and therefore are briefly stated.

6. The Fund's rule 12.1(2) of the then Rules of the Fund stated that the board is constituted of 14 persons, comprised of 7 board members appointed by the principal employer (appointed members) and 7 board members elected by the employees (elected members). The Fund's quorum requires 7 board members to be present and that is comprised of 4 elected members and 3 appointed members.

7. A concern was raised regarding a certain three "*elected"* members not being elected but deployed by unions, and for that reason non-compliant with the Rules of the Fund. This culminated to the removal of those individuals from the board. Further, one (1) elected member was placed on precautionary suspension by the employer. These developments led to the board of the Fund being not in a position to quorate. The board at that time was not properly constituted, dysfunctional and inoperative.

8. The chairman of the Fund called for intervention of the Authority and he indicated on how the intervention may happen. The Authority engaged with the Fund and requested it to nominate two members from the erstwhile board

members for its consideration. The Fund accordingly submitted the names. On 4 November 2025 the Authority appointed the nominated two individuals alongside with two independent members as interim board members. Pursuant to section 26(2)(b) of the Act, duties were assigned to the members.

9. During February 2026 the Applicant, who served in the dysfunctional board then, caused a letter to be sent to the Authority, requesting certain information regarding the appointment of the interim board and the reasons therefore. He sought to invoke the provisions the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"). The crux of the Applicant's contention is that the conduct of appointing the interim board by the Authority constituted an administrative action which materially and adversely affected his right.

10. On or about 16 March 2026 the Applicant lodged his application for reconsideration and raised four grounds challenging the decision of the Authority to appoint the interim board. The Applicant contended, *inter alia*, that the Authority failed to issue a 90-day formal written notice to the Fund before appointing the interim board as required by section 26(2) of the Act. Augmented grounds were submitted, which included specific incompetent relief sought in the reconsideration application.

11. On 17 April 2026 the Authority filed the underlying documents on which the decision was based together with further reasons. It raised points *in limine*

(preliminary issues) for the Tribunal to consider. The Authority's contention is that in terms of section 230(1)(a) of the FSR Act, only a "*person aggrieved*" by a "*decision*", as defined in section 218, may apply for reconsideration.

POINT IN *LIMINE*: JURISDICTION

12. This Tribunal has maintained in many cases that in the event of jurisdiction being challenged at the outset (*in limine*), the complaint is the determining factor since it contains the legal basis of the claim under which the complainant has chosen to invoke the Tribunal's competence.[1]

13. The stance of the Tribunal in such cases is underpinned by the legal principle confirmed by the Constitutional Court in *Gcaba v Minister for Safety and Security* 2010 (1) BCLR 35 (CC), 2010 (1) SA 238 (CC) para. 75, which is that jurisdiction is determined with reference to the allegations in the pleadings and not by the substantive merits of the case.[2]

14. The Authority submitted that the impugned decision was not taken in relation to the Applicant. It was taken in relation to the Fund, in order to address a governance vacuum and to constitute an interim board capable of restoring lawful governance. Further, the Authority submitted that the appointment of the interim board neither removed the Applicant from office under section 26(4) of the Act, nor made any adverse finding about his fitness, propriety or conduct.

[1] Kane v FSCA: Case No. 17/2026, par 14
[2] *Ibid*

15. The Applicant submitted that, as an elected member of the Fund, his rights were undermined because he is entitled to serve his five (5) year term in full. Further, he submitted that the Authority did not follow the instructions of the Fund when it was requested to intervene. However, during his submissions at the hearing and when asked if the Fund objected to the decision of the Authority the response was in the negative.

REASONS AND CONCLUSION

16. It is common cause that while the Applicant was an elected member of the board, a concern arose that certain members of the board were not elected in terms of the Rules of the Fund and therefore non-compliant. Shortly thereafter another member of the board was placed on precautionary suspension by the employer and thus disqualified. This culminated to a board that was not properly constituted, dysfunctional and inoperative.

17. In *Impala Platinum Limited v the Registrar of the Pension Funds Case No. A5/2017*, the Appeal Board of the Financial Services Board, in a sense the precursor of this Tribunal considered, amongst other things, the appointment of an interim board in terms of section 26 (2) of the Act, following a board that was not properly constituted. In that matter there was no board in existence as required in terms of section 7A of the Act. The applicant in that matter contended that the Registrar *"removed"* the members who were members of

the dysfunctional board when he decided to appoint an interim board. The Board of Appeal found that the Registrar did not "*remove"* the then members. By parity of reasoning, the Applicant's contention in this matter that the decision of the Authority to appoint the interim board led to him losing his then board membership, is not sustainable. In any event, the Applicant conceded during the hearing of the matter that the Authority acted lawfully.

18. The Applicant is disappointed that he was not retained or nominated to be on the interim board. The Fund was requested to nominate two individuals to be part of the interim board. The Fund submitted the names of the nominated individuals and the Applicant was not one of the names. This is a classic case of a disappointed applicant.

19. In the *Francis George Hill Family Trust v South African Reserve Bank and Others*[3] matter, the court therein referred to the dictum in *Ex Parte Sidebotham (1879) 14 Ch D 458 (CA)* where the court remarked "*But the words <u>'person aggrieved'</u> do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. <u>A 'person aggrieved'</u> must be a man against whom a decision has been pronounced which has wrongly deprived him of something, or wrongfully affected his title to something*".

[3] 1992 (3) SA 91 (AD); [1992] 2 All SA 137 (A)

20. The Authority's decision was not directed at the Applicant as a specific person as contemplated in section 218 of the FSR Act. It was a lawful intervention of the Authority in a situation where there was a dysfunctional and inoperative board. We agree with the submission of the Authority that the impugned decision did not make any adverse finding about the fitness, propriety or conduct of the Applicant. In fact, the Applicant is not worse off because of the decision. Put it differently, no Applicant's legal right has been affected or deprived by the decision.[4]

21. For the reasons stated, the Applicant is not "*a person aggrieved*" in terms of section 230(1)(a), read with "*a decision"* as defined in section 218, of the FSR Act. Therefore, this Tribunal lacks jurisdiction to hear the matter.

ORDER: The application for reconsideration is dismissed.

Signed on 18 June 2026

__*Sgd Adv W Ndinisa*_____

Adv W Ndinisa

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[4] AOA SA (Pty) Ltd v FSCA and Another (A18/2020), par 13