

SCA RULES ON THE DISCLOSURE OF CONFIDENTIAL FIC INFORMATION

Category: Privacy Law, Infosec, and POPIA

written by Tshimangadzo Nengovhela | October 28, 2026



The Supreme Court of Appeal (“**SCA**”) recently handed down a ruling in *Financial Intelligence Centre v Ndudane and Others* [2026] ZASCA 122.^[1] The judgment is important because it confirms that confidential information held by the Financial Intelligence Centre (“**FIC**”) cannot simply be disclosed because someone believes it may help their court case.^[2] The Court stressed that South Africa’s anti-money laundering system relies on confidentiality, and that information submitted to the FIC enjoys strong legal protection.^[3]

The dispute arose from litigation involving parties who alleged that several banks had unfairly discriminated against them by ending their banking relationships.

To support their claims, the applicants asked the FIC to provide Suspicious Transaction Reports, Risk Management and Compliance Programmes (“**RMCPs**”) submitted by banks, information relating to several companies and individuals, and details of any directives issued by the FIC. The Equality Court ordered the FIC to disclose the documents, however, the FIC, together with Nedbank and ABSA, appealed the decision to the SCA.

The SCA overturned the Equality Court’s order and found that the requested information should not be disclosed.^[4] The Court held that the Financial Intelligence Centre Act (“**FICA**”) creates a strong system of confidentiality. Sections 40 and 41 of FICA do not give everyone a general right to access information held by the FIC, and a court cannot create a right to disclosure where no legal right already exists. The applicants failed to establish a lawful basis for receiving the information, and important parties, including several banks, should have been joined to the proceedings before any disclosure order was granted.^[5]

The Court explained that the FIC receives highly sensitive information from banks and other accountable institutions to help combat money laundering, terrorist financing, fraud, organised crime, and other financial crimes. If this information could easily be accessed, ongoing investigations could

be compromised, suspects could be alerted to investigations, private information could be exposed, and banks might be less willing to report suspicious activities. For these reasons, confidentiality is central to FICA.

The applicants argued that because a court can order disclosure under section 40(1)(e), they were entitled to receive the information. The SCA rejected this argument. The Court explained that section 40(1)(e) does not create a new right to information. Instead, it only applies where a person already has a legal right to obtain the information through another legal process.^[6] In simple terms, a court order can enforce an existing right to disclosure, but it cannot create that right from nothing.

The SCA found that the applicants were asking for large amounts of confidential information in the hope that they might find something useful for their case. The Court described this as a fishing expedition. South African courts do not allow parties to request confidential documents simply to see whether evidence might be found. A party must identify specific documents and show why they are legally entitled to them.

The Court also found that several affected parties had not been joined to the proceedings.

The disclosure order would have affected several institutions whose confidential information was involved, such as:

- Nedbank;
- ABSA;
- Investec;
- Standard Bank; and
- FirstRand Bank.

Because these parties had a direct interest in maintaining confidentiality, they should have been given an opportunity to be heard before any order was made.

This judgment confirms that information submitted to the FIC is afforded a high degree of confidentiality and is not intended to serve as a source of documents for ordinary litigation. The court emphasised that disclosure of FIC-held information will only be ordered where a clear and lawful basis exists, and that the rights and interests of all affected parties must be carefully protected. The judgment further underscores that the effectiveness of South Africa's anti-money laundering and counter-terrorist financing framework depends on preserving the confidentiality of information reported to and held by the FIC.

The SCA made it clear that confidential information held by the FIC cannot be treated like ordinary court discovery documents. It is essential that parties seeking access to such information first establish a legal right to disclosure. The judgment strengthens the protection of confidential financial intelligence and reinforces the role of the FIC in combating financial crime while safeguarding privacy and regulatory investigations.

^[1] *Financial Intelligence Centre and Others v Ndudane and Others* (267/2025) [2026] ZASCA 122 (23 September 2026)

^[2] Financial Intelligence Centre Act 38 of 2001 ("FICA"), ss 40 and 41

[3] FICA establishes the Financial Intelligence Centre and provides the legislative framework for combating money laundering, terrorist financing, and related financial crimes. Financial Intelligence Centre Act 38 of 2001.

[4] *Financial Intelligence Centre and Others v Ndudane and Others* (267/2025) [2026] ZASCA 122 paras dealing with the interpretation of ss 40(1)(e) and 41 and the confidentiality of information held by the FIC.

[5] Ibid. The SCA held that ss 40 and 41 of FICA do not create a general right of access to information held by the FIC.

[6] Ibid. The Court found that a disclosure order under s 40(1)(e) may only be granted where a party can establish an existing legal right to the information sought.