

MEDIA RELEASE

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ATTORNEY FIRM SANCTIONED WITH R7.7 MILLION FINANCIAL PENALTY FOR NON-COMPLIANCE WITH FINANCIAL INTELLIGENCE CENTRE ACT

13 November 2024: On 16 October 2024 the Financial Intelligence Centre Act (FIC Act) Appeal Board (Appeal Board) delivered judgment, dismissing in its entirety an appeal lodged by a firm of attorneys, Kunene Ramapala Incorporated (the appellant).

Executive Manager for compliance and prevention at the FIC, Christopher Malan said: “The FIC has consistently on public platforms pleaded with attorneys to comply with the FIC Act. The outcome of this appeal is a clear message that non-compliance with the FIC Act may have serious consequences.”

The case is definitive for several reasons. In December 2022 the FIC assumed responsibility for the supervision and enforcement of all non-financial businesses and professions sectors listed under Schedule 1 of the FIC Act, including legal practitioners. While attorneys have previously been sanctioned by the FIC, this was the first outcome of an appeal lodged by an attorney against an administrative sanction issued by the FIC.

The FIC determined, following an inspection of the appellant in June 2023, that the institution had not complied with FIC Act requirements to document, maintain and implement a risk management and compliance programme (RMCP), and to scrutinise clients against the targeted financial sanctions (TFS) list.

In addition, the appellant failed to comply with FIC Directives 1, 2 and 4, in that the institution's registration details were not updated on the goAML system and that it had shared its login credentials.

The appellant also did not comply with Directive 6 by the FIC which required certain accountable institutions – including attorneys – to file a risk and compliance return (RCR) questionnaire within a specific time frame. Directives have the force of law and are seen as an extension of the FIC Act.

The FIC determined that the appellant was grossly negligent and consequently imposed a financial penalty of R7 772 000, in the following respects:

- Failure to document, maintain and implement an RMCP – R3 800 000.
- Failure to scrutinise clients against the TFS list – R3 922 000.
- Failure to comply with Directive 6 of 2023 by not timeously submitting its RCR – R50 000.
- Failure to comply with FIC Directives 1, 2 and 4 in that the institution's details were not updated on the goAML system and that the institution had shared its login credentials – R20 000.

Apart from the financial penalty, the FIC also issued remedial directives to the appellant to scrutinise and document its new and existing clients in compliance with the TFS list, review its RMCP at various intervals to ensure its relevance in respect of their operations, and comply with Directives 1, 2 and 4 and update its login credentials and registration details.

During the appeal, the appellant conceded the merits and admitted its previous failure to comply. The grounds of appeal were solely limited to the financial penalties arguing that the penalties were excessively harsh and punitive.

The Appeal Board found that the appellant was aware of its compliance obligations and that the institution had acted with gross negligence and wilfully failed to comply with its obligations under the FIC Act. The Appeal Board further found that:

- The claim that the penalties for non-compliance were disproportionate was unfounded.
- The sanctions imposed were not startling inappropriate nor based on any error in the FIC’s evaluation of the facts or interpretation of law.
- The FIC sanctioning guidelines, based on institutions’ size and annual turnover, was legally sound. These guidelines serve to promote consistency, and the FIC may deviate from them, if the facts of a case justify any deviation.

The FIC took a holistic approach in determining sanctions, with deterrence being the primary goal, and by implication the FIC approach has been endorsed by the Appeal Board judgment.

On 11 November 2024, Kunene Ramapala Incorporated was electing to institute a review application in the High Court against the decision of the Appeal Board.

Issued by the Financial Intelligence Centre

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Note to editors: As South Africa’s national centre for the gathering and analysis of financial data, the role of the Financial Intelligence Centre (FIC) is to safeguard the integrity of the country’s financial system and its institutions. In pursuit of this, the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), mandates the FIC to assist in the identification of the proceeds of crime and assist in combating money laundering, terrorist financing and proliferation financing, to facilitate effective supervision and enforcement of the Act.

Under this legislation, financial and non-financial institutions are required to fulfil certain compliance obligations, including registering with, and filing various regulatory reports to the FIC. The information provided in these reports forms the basis for the FIC’s analysis to develop financial intelligence reports for use by a wide range of law enforcement and other competent authorities, and other institutions to facilitate the administration and enforcement of the laws of the Republic. The FIC Act also sets out the enforcement and penalty regime for non-compliance with the FIC Act.

For more about the FIC visit www.fic.gov.za

ITEM	2023/24
Total institutions registered as at year end	51 020
Compliance events and attendees	48 events and 32 914 attendees
Compliance inspections	558
Regulatory reports received	>7.4 million
Cash threshold reports received	>3.1 million
Suspicious and unusual transaction reports received	414 984
Financial intelligence reports disseminated	2 654 reactive, 1 159 proactive, 111 on illicit financial flows

ITEM	2023/24
Value of suspected criminal proceeds frozen	R295.8 million
Value of proceeds of crime recovered, in which the FIC's financial intelligence was used	>R98.5 million