

THE FINANCIAL SERVICES TRIBUNAL

CASE NO: FAB62/2023

In the matter between:

MATONGO KEDIBONE

APPLICANT

And

OFFICE OF THE OMBUD FOR FINANCIAL

SERVICES PROVIDERS

1ST RESPONDENT

REG NO.: FAB62/2023

THE STANDARD BANK OF SOUTH AFRICA

LIMITED

2ND RESPONDENT

REG NO.: 1962/000738/06

DECISION

Panel Members: Legodi J (chair), Davis J and S Khumalo SC (Members)

INTRODUCTION

1. A determination made by FAIS Ombud (the Ombud) on 17 August 2023 in a complaint lodged by Mrs Kedibone Matongo (the complainant) against the

Standard Bank of South Africa (the Bank) is the subject of a dispute before us. The matter is before us as per the direction of the high court- Pretoria to be dealt with in terms of section 230 of Financial Sector Regulation Act No. 9 of 2017 (the Act).

2. The complainant's complaint was dismissed by the Ombud on the grounds that it had no reasonable prospects of success. The complaint was dismissed in terms of section 28(1)(a) of Financial Advisory and Intermediary Services Act No.37 of 2002 (FAIS Act). Section 28 (1) (a) provides that the Ombud must in any case where a matter has not been settled or a recommendation referred to in section 75 (5) (c) has not been accepted by all parties concerned, make a final determination which may include the dismissal of the complaint.

Background

3. During June 2021, the husband of the complainant purchased from Supertech Shelly Beach (Pty) Ltd (the dealer), a BMW motor vehicle X5 Drive 30DM Sport 2020 (the vehicle) for the total amount of R2 254 908.00. The purchase of the vehicle aforesaid was financed by the Standard Bank of South Africa Limited (the Bank).
4. On 18 September 2021 the complainant's husband was involved in a motor vehicle accident. He died at the scene of the accident.
5. On or about October 2021 the complainant lodged a claim with the Bank, purportedly on the alleged credit Life cover policy taken by the complainant's late husband in respect of the motor vehicle aforesaid.
6. On 6 April 2022 the complainant received a communication from the Bank. In the communication, she was advised that there was no credit Life Cover on the vehicle and that the total amount outstanding on the vehicle was R2 221 101.64.
7. It was later revealed that the complainant's late husband had a straight life cover policy and not credit life cover. On 4 May 2022 an amount of R2 million was paid to the complainant in respect of the life cover aforesaid. The Bank consistently

advised the complainant that her late husband declined or opted not to take a credit life cover in respect of the motor vehicle aforesaid.

8. In its communication of 20 May 2022, the Bank advised the complainant that her husband was given an option to take a credit life cover in respect of the motor vehicle but declined to take such a cover. Instead, he indicated to the Bank's officials that he will make his own arrangements. The officials included the representatives of the Bank stationed at the dealer's place of business.
9. Unsatisfied with the Bank's explanation, the complainant on 8 November 2022 lodged a complaint with the Ombud against the Bank.
10. As indicated in paragraph 2 above, the Ombud dismissed the complainant's complaints. Subsequent thereto, the complainant approached this Tribunal in terms of section 230 of the Act.
11. On 20 September 2023 Harms J, a deputy chair of the Tribunal at the time, made a ruling as follows:

"The application for leave to apply for reconsideration is dismissed.

There are no prospects of success on the grounds set out by the Ombud.

In addition, the complainant's underlying claim exceeds R800 000.00, the limit of the Ombud's jurisdiction".

12. Again, the complainant unsatisfied with the ruling by Harms J, approached the high court to have his ruling set aside. On 31 October 2024 the high court in Pretoria reviewed and set aside the ruling by Harms J. The matter was remitted to this Tribunal for reconsideration by the new panel.

Issues raised by the complainant

13. The complainant in her papers, identified three issues for reconsideration. First, that the Ombud dealt with the matter when it did not have the jurisdiction to entertain the complaint. The second issue relates to the Ombud's alleged reliance on the discussion the complainant's husband is alleged to have had with the dealer regarding the option to take up a credit life cover. Lastly, the complainant criticises what she refers to as a pre-populated agreement concluded between the complainant's late husband and the Bank. In particular, reliance thereto by the Ombud in dismissing the complainant's claim.

14. Hereunder we deal with each of the issues identified by the complainant in paragraph 46 of her application for reconsideration.

Lack of jurisdiction

15. It is common cause that when the complainant lodged her complaint with the Ombud, the Ombud did not have the jurisdiction to deal with the complaint. The amount of the complainant's claim was more than R800 000.00. The Ombud was therefore not competent to investigate and decide on the claim when its jurisdiction was limited to R800 000.00. The claim by the complainant was for an amount exceeding R800 000.00. It was only in June 2024 that the monetary amount for the jurisdiction of the Ombud was increased from R800 000.00 to R3,500 000.00.

16. In the complainant's statement of claim that was lodged with the Ombud on 8 November 2022, there was no mention of the Ombud's lack jurisdiction to deal with her claim. Instead, in paragraph 32 of her claim she wanted the Bank to be ordered to comply with the alleged credit life policy in accordance with clause 1.14 of the credit evaluation instalment sale agreement which was attached to her "statement of claim".

17. Clause 1.14 of the agreement stipulates as follows:

"I confirm that accepting and entering into this Agreement will not cause me to become over-indebted as contemplated in the NCA".

18. The relevance of clause 1.14 is not clear in the present dispute between the complainant and the Bank. It suffices to mention that the clause must have been intended to ensure that the Bank does not recklessly lend financial assistance to parties who do not qualify.
19. The lack of jurisdiction was an additional ruling by Harms J as quoted in paragraph 11 above. The main determination and or ruling by both the Ombud and Harms J was that the complainant had no reasonable prospects of success in her claim against the Bank, a ruling that we agree with as it would appear later hereunder when we deal with the merits of the case.
20. The question regarding the topic under discussion is whether it will serve any purpose to set aside the Ombud's determination and remit same to the Ombud for consideration in terms of section 230 (1) (a) of the Act. Subsection (1) (a) provides that in proceedings on an application for reconsideration of a decision, the Tribunal may, by order set the decision aside and remit the matter to the decision-maker for further consideration.
21. The correct route to follow, as we see it, will in the circumstances of the case, be to invoke the provisions of section 234 (4). To set aside the decision of the Ombud and remit the matter to the Ombud for further consideration in terms of subsection (1) (a), where there are no merits to the case, would serve no purpose and would make no sense.
22. We are seized with this matter as per the high court order made on 31 October 2024 referred to in paragraph 12 above. We will do so by dealing with the merits of the application for reconsideration in terms of section 230 (1) (a) read with subsection (4) of section 234 of the Act.

The complainant's case on merits

23. Subsection (4) of section 234 provides that the Tribunal may, by order, summarily dismiss an application for reconsideration of a decision if the application is frivolous, vexatious or trivial.

24. As indicated in paragraph 13 above, the first dispute relates to the agreement which the complainant's late husband concluded with the dealer from which the vehicle in question was purchased. The other dispute is about the agreement which the complainant's late husband concluded with the Bank as the financier.
25. The first issue is whether the complainant's late husband was properly advised to take up a credit life cover for the vehicle. Put differently, whether the late husband of the complainant elected not to take up such a cover after having been duly advised.
26. In dealing with the agreement that was concluded between the complainant's late husband and the dealer, the complainant contends that the Ombud was wrong in finding that this was an offer made by the Bank to the complainant's late husband.
27. In this regard, the complainant referred to section 106 of National Credit Act in paragraph 50 of her statement of claim dated 7 March 2025. She then concluded as follows in paragraph 51 thereof:
- "It is submitted that in terms of the above provision of the NCA, the applicant's husband was within his right to refuse the insurance offer by the third party (referring to the dealer) on account of organising his own, and that legislative option by the applicant's husband cannot be said to be a refusal of an insurance policy offered by the second respondent (referring to the Bank). The decision by the First Respondent that he was offered by the Second Respondent and refused the offer, stands to be reconsidered and be set aside".*
28. The concession by the complainant as quoted above, is not irrelevant to the question whether her husband was aware of the importance of arranging for a credit life policy. The election after the dealer appraised the complainant of the option to take up a credit life cover, in our view, corroborates what his attitude was when he concluded the credit sale instalment agreement with the Bank.

29. Such election was consistent with what the Bank conveyed to the complainant in the Bank's letter of 7 December 2022. This was after the Bank investigated and reviewed her complaint.

30. In the letter, the Bank stated that: '*...the deceased, J Matongo was given the option for Credit Life assurance which he declined*'. Furthermore, it was clearly indicated that the instalment sale agreement that was electronically signed by the complainant's late husband, constituted a valid and binding agreement with the deceased including the customer's declaration.

31. The complainant's attention was also drawn to the fact that the credit life insurance is an optional product, meaning it is not obligatory. It was further explained that it was within her husband's discretion to choose whether to take credit life cover. It was also explained that according to the electronically signed agreement, the complainant's late husband did not opt for it.

32. The complainant's attention was drawn to clause 1.11 of the declaration made by the complainant's husband on the Bank's document or branded logo as follows:

I confirm that:

1.11 the benefits of credit insurance in relation to this agreement have been fully explained to me and, unless the costs of the credit expressly provide otherwise, I have chosen not to take out such insurance".

33. The contention on behalf of the complainant as we could understand it, was that the election as per the declaration herein was made to the dealer and not as part of the credit Transaction Instalment Sale Agreement with Bank. There is no merit to this contention. First, the declaration is made on the Bank's branded logo or document. Second, as clarified by Counsel on behalf of the Bank during argument, the official who dealt with the complainant's late husband at the dealer's place of business, did so as a representative of the Bank.

34. In the letter of 7 December 2022, it was also explained to the complainant that her late husband signed what is referred to as a "**Client Mandate and Record**

Advice.” The complainant’s late husband confirmed that he declined credit life insurance policy that would have covered him for his death, dreaded diseases, disability and retrenchment. The complainant was then informed that having regard to all the above, her claim could not be acceded to.

35. Unsatisfied with the decision of the Bank, the complainant ultimately approached the Ombud to deal with the dispute. The Ombud also found that there was no merit to the complaint. In its determination, the Ombud found that there was no proof that any such credit life cover was taken despite due advice or option having been availed to the complainant’s late husband at the conclusion of the credit instalment sale agreement.
36. For what is stated in paragraph 35 above, the Ombud concluded that it was unable to find any reasonable prospect of success. This was also the conclusion by Harms J in his ruling of 20 September 2023.
37. We are unable to disagree with the Ombud’s finding that there are no merits to the complainant’s claim against the Bank. It is not clear what is the complainant’s case on merits after having had an opportunity to consider the reasoning by the Ombud.
38. Coming to the next issue for determination, in her statement of claim dated 7 March 2025, the complainant referred to the life cover as if it were a credit life cover. The life cover in question was of course, not a credit life policy which is the subject of a dispute before us. The complainant is obviously mistaken insofar as she might wish to premise her claim on the email letter of 13 April 2022 which was sent to her by the Bank’s insurance department.
39. In the email of 13 April 2022, the Bank confirmed that her husband had “a life cover policy” and not a credit life cover policy with the Bank’s division. The cover in respect of the life policy was R2 million which was paid to her on 4 May 2022. This payment was not used to set-off or settle the outstanding amount in respect of the vehicle. The complainant was entitled and justified to be paid the amount, because the R2 million was not for credit life cover payout.

39. During oral argument, counsel for the complainant insisted on the suggestion that credit life cover was taken and paid for every month until the complainant's husband passed on. In pursuing this point, it was argued that the total costs for the vehicle included a premium for the credit life cover. Of course he was mistaken in this regard.
40. The total costs of the agreement in the amount of R2 254 908.97 must be seen in context. The terms and conditions of the agreement give guidance how the figure of R2 254 908.97 was arrived at. The question is whether the premium amount for the alleged credit life cover was included in the total costs of the agreement.
41. Part A of Pre-populated/ Cost of Credit deals with the type of agreement between the Bank and complainant's late husband as Transaction Instalment Sale agreement. Clause 5 thereof deals with **Total cost of the Agreement (inclusive of VAT)**. Clause 5.2.4 deals with total Credit Life insurance premiums over the agreed term if a choice is made to accept the Bank's policy of insurance. If such a decision is made, the amount for the premium is expected to be reflected on the column opposite clause 5.2.4. However, no such amount is indicated in the column. (Our emphasis).
42. In paragraph 2.1.6 of its written heads, the Bank contends that the fact that the agreement does not contain a clause 10 in part A of the agreement, clearly is indicative that no credit life insurance was taken out by the deceased in terms of this Agreement. We tend to agree with this contention.
43. The suggestion in paragraph 53.1.1 and 53.1.2 of her statement of claim also has no merit. The Bank is alleged to have failed to ensure that the complainant's late husband understood his rights and obligations and the risk and costs associated with not taking credit life cover in relation to the vehicle in question. This is speculative and without the facts upon which the allegation is based. Twice, the complainant's husband opted otherwise. The first occasion was when he completed contractual documents at the dealer's place of business. This was when he indicated that he would make his own arrangements for the credit life cover.

The second occasion was when he completed and signed the instalment sale agreement with the Bank.

44. What is stated above, in our view, should end any argument or suggestion that there was a credit life cover taken or that the complainant's late husband was not properly advised to take up a credit life cover. There is no merit to the complainant's case.
45. Section 234 (4) of the Act allows the Tribunal to summarily dismiss an application for reconsideration of a decision if the application is frivolous, vexatious or trivial. The facts of the present case support such an order.
46. Whilst the complainant's claim may not be trivial in value, her case is however meritless enough not to warrant much time and attention. However, to insist on this application in the light of what has been stated in the preceding paragraphs, in our view, renders the application frivolous and vexatious falling squarely within the ambit of section 234 (4).
47. A claim is frivolous when it has no legal merit or is absurd or is without serious purpose. On the other hand, a claim may be regarded as vexatious if it is launched without serious legal basis.
48. In the instant application, there is no sensible legal argument or evidence to support the complainant's claim. Persistence in the claim is frivolous and vexatious. The application is destined to be dismissed.
49. The relief sought by the complainant in paragraphs 55 and 56 seems to ignore the imperative in section 234. With regards to the relief sought in paragraph 56, the Tribunal has no legislative authority to order the Bank that it had two options in settling the loan amount in accordance with the credit life cover the complainant's late husband is alleged to have taken. Regarding the relief sought in paragraph 55, the setting aside of the determination must be accompanied by an order remitting the matter to the decision maker as contemplated in section 234 (1). We do not have to make such an order as the application lacks merit.

50. Whilst the Ombud may not have had jurisdiction to deal with the complaint when it made the determination, it will serve no purpose to remit the matter to the Ombud based on the increased jurisdiction and or abandonment of portion of the claim.

Order

51. Consequently, an order is hereby made as follows:

51.1 The application for reconsideration is hereby dismissed.

Signed on 15 July 2025 on behalf of the panel members.



LEGODI J (Panel Chair)

DATE OF HEARING: **09 July 2025**

DATE DELIVERED: **15 July 2025**

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