



## THE FINANCIAL SERVICES TRIBUNAL

Case No.: **FSP6/2025**

In the matter between:

**MMANYATSO IRENE MOKHOTSOA**

Applicant

and

**CAPITEC BANK LTD**

Respondent

Tribunal Panel: Davis J, Adv TJ Golden SC, Adv PR Long

Appearances: The application was determined on the papers.

Date of decision: 9 September 2025

Summary: Reconsideration application in terms of Section 230 of the Financial Services Regulation Act, 9 of 2017 arising from the debarment of the applicant.

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**DECISION**

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1. This is a reconsideration application in terms of Section 230 of the Financial Services Regulation Act, 9 of 2017 (*“the FSR Act”*), arising from the applicant’s debarment by the respondent, Capitec Bank Limited (*“Capitec”*). The hearing was enrolled on Friday, 15 August 2025. The parties agreed that the application could be determined on the papers.
2. The applicant was employed by Capitec as a service consultant and an appointed representative in accordance with Section 13 of the Financial Advisory and Intermediary Services Act 37 of 2002 (*“FAIS”*). It is not in dispute that the applicant was subject to Capitec’s Code of Conduct. Although the applicant disputes that she was unaware of a Capitec policy which deals with the type of debit order switch for which she was debarred, there is no material dispute that she is subject to Capitec’s Debit Order Switch Policy (*“the Policy”*).
3. The debarment of the applicant involved a debit order manipulation switch where it is alleged she had manipulated Capitec’s banking system by capturing external bank account numbers belonging to the client during debit order switches to qualify for Branch Team Awards.
4. We set out a summary of the salient facts.

### **The relevant facts**

5. On 29 August 2024, the applicant was required to perform a debit order switch between a customer's old Capitec bank account and the customer's new Capitec bank account. Capitec alleges that in contravention of its Policy and instead of using the customer's old Capitec account details, the applicant used the details from another banking institution, FNB, that did not belong to the customer.
6. In terms of the forensic investigation that was conducted, a Ms G Morudo (*"the Customer"*), opened a new Capitec bank account on 29 August 2024 and requested a debit order switch from her old Capitec bank account to the new Capitec account in respect of two debit orders. Rather than submitting the Customer's old Capitec bank account details (which according to Capitec, would not qualify for the respondent's Team Awards Incentive), the applicant submitted bank account details of an FNB account, which did not belong to the Customer.
7. According to Capitec, the applicant was aware that the bank account details did not belong to the customer.
8. The applicant was subsequently charged with misconduct and called upon to attend a disciplinary inquiry. She avoided the disciplinary hearing and instead resigned with immediate effect on 23 October 2024 without serving any notice period.
9. Capitec did not proceed with the disciplinary hearing after the applicant resigned.

10. The applicant was served with a Notice of Intention to Debar on 25 November 2024 and was provided with a copy of the Respondent's Policy. She was afforded ten days to submit written representations as to why she should not be debarred.
11. The applicant submitted written representations on 9 December 2024.
12. Upon consideration of the applicant's written representations, a decision was made to debar her. She was notified of her debarment on 17 December 2024. The Financial Sector Conduct Authority ("FSCA") was notified of the applicant's debarment on the same date.
13. Reasons for the debarment dated 24 January 2025 were provided to the applicant on 29 January 2025, after a request for reasons was submitted on her behalf.
14. Capitec took the decision to debar the applicant on the basis that she was dishonest and had manipulated the respondent's banking system to gain from its award incentives.
15. The applicant does not materially challenge the process that was followed to debar her and confirms the process that was followed by Capitec in her application for reconsideration dated 4 February 2025. Although she alleged that Capitec did not provide her with reasons for the debarment (and she proceeded

to file her representations in the absence thereof), this is not correct as reasons were provided.

16. According to the applicant, she did not open and close the existing bank account and there were no incentives gained by her. Therefore, she does not accept the findings. She was approached with this kind of switch for the first time and there is no policy that was provided by the respondent to assist her to do a debit order switch from one Capitec account to another Capitec account. She also alleges that there is nothing stipulated in the Policy about such a switch of debit orders. Notably, Capitec's Policy on Debit Order Switching contemplates a debit order switch from a non-Capitec account to a Capitec account.
17. The applicant submits that the client was assisted by her colleague Ms Myeni (Myeni). The client had an existing Capitec account and wanted to switch her debit order to a new Capitec account. Myeni proceeded to close the old Capitec account. However, when she wanted to retrieve a bank statement on the old account for purposes of transferring the debit order, she could not retrieve the bank statement. According to the statement of the branch manager, Myeni approached her for assistance, and she (the branch manager) referred Myeni to the applicant because she previously attempted to do such a switch but was unsuccessful. According to Myeni, the branch manager had told the applicant (and Myeni) that an external account had to be used for the switch. On the applicant's version it was on this basis that she used the client's FNB account.

18. The applicant did not initially challenge the debarment procedure that was followed. However, in her Amended Grounds dated 24 March 2025, she submits that the decision to debar her was both procedurally and substantively unfair, defective and without merit. Under Part E of the Amended Grounds, the applicant highlights the following alleged contradictions and inconsistencies in relation to the respondent's decision to debar her:

18.1. First, Capitec contradicted itself in relation to who had initiated the debit order switch. In its Further Reasons, the respondent claimed that the applicant had manipulated the banking system by submitting an FNB account that did not belong to the customer. However, elsewhere in the same document, it is stated that another employee, Myeni, had initially assisted the Customer with opening and closing the accounts and who had later requested the applicant to complete the debit order switch. The applicant submits that if the transaction was improper, then the responsibility should be shared by all employees, including Myeni, who had approved the switch.

18.2. Second, the respondent's claim that she had a financial motive, is unsubstantiated. The applicant contends that Capitec provided no evidence that she had personally benefitted or that she even knew the transaction contributed to branch performance metrics. She contends that the Team Awards Incentive was a discretionary branch-wide incentive and not a direct financial gain for her and, furthermore, her

initial statement suggests she was merely trying to meet her monthly targets, not engaging in fraudulent conduct.

- 18.3. Third, Capitec failed to identify a clear policy that was violated. The Further Reasons assert that the applicant's actions had contravened Capitec's Policy on Debit Order Switching. However, in paragraph 10.2, Capitec acknowledges that there was confusion among employees about whether a debit order switch could be performed between two Capitec accounts. Despite this, Capitec did not reference any specific policy or rule which prohibited the transaction. The applicant states that she sought guidance from the branch manager, Ms Mabalane (Mbalane), who explicitly approved the switch. If this transaction was truly against Policy, then why did the Branch Manager approve it? The respondent failed to explain this contradiction, casting doubt as to whether the alleged misconduct was even a policy violation.
- 18.4. Fourth, in relation to procedure, the debarment was procedurally unfair and irregular and violated her right to fair administrative action as envisaged by Section 33(1) of the Constitution. She alleges, in this regard, that Capitec proceeded with the disciplinary inquiry in her absence despite her prior resignation, and failed to notify her adequately that the hearing would continue. She contends that the respondent's practice of automatically recording a guilty verdict for employees who

resign before a disciplinary hearing is irrational and unfair, as resignation does not constitute an admission of guilt.

- 18.5. Fifth, she submits that the respondent failed to provide her with “*critical procedural documents and evidence, including the disciplinary hearings’ records or transcripts, despite multiple requests*”. She alleges that the absence of this material deprived her of the opportunity to make meaningful representations in contravention of Section 229 of the FSR Act, and her constitutional right to fair administrative action.
- 18.6. Sixth, in relation to the procedure, that the Notice of Intention to Debar was defective as it did not specify the exact financial benefit that she had allegedly gained, the specific Policy she contravened, or a clear evidentiary basis for the allegations. She was unable to adequately respond to the allegations without this information, rendering the debarment procedurally defective.
- 18.7. Seventh, in relation to the substance of the decision, the respondent had failed to prove dishonesty or a lack of integrity as there was no evidence that she had intentionally sought to manipulate the debit order switch for personal or branch incentives. The forensic report does not establish that she had personally benefitted from or was even aware of any incentive structure tied to debit order switches. She did not independently initiate the transaction but was approached to complete



an already in-progress switch that had been handled by another employee and had sought the approval of her Branch Manager before proceeding with the transaction, which demonstrated that she had acted in good faith.

18.8. Eighth, Capitec had failed to demonstrate that she had violated a clear policy or regulation as there is no documented policy explicitly prohibiting the type of debit order switch that she had performed. In this regard, the respondent's own witness statements indicated confusion among employees regarding internal Capitec-to-Capitec debit order switches, further providing that no clear rule was violated. She submits that she was not provided with training nor given any written guidelines on the handling of such transactions and that there was no specific policy in place.

18.9. Lastly, she submits that the sanction of debarment is disproportionate to the alleged misconduct in that the FAIS Act requires a proportional response, and debarment is an extreme penalty that permanently affects her ability to work in the financial sector. She submits that even if the respondent had concerns regarding the transaction, progressive disciplinary measures such as re-training, or a warning would have been more appropriate, and that the respondent failed to consider key mitigating factors, including her lack of prior disciplinary history, the absence of any financial loss or harm to the bank or its clients, and the

fact that the transaction was authorised by her manager. Given these circumstances, the decision to impose the harshest possible sanction is both unreasonable and unjustifiable.

19. The applicant seeks the setting aside of the debarment for these reasons.

## Evaluation

20. Capitec's decision to debar the applicant is based on section 14(1) of the FAIS Act, which provides:

*"14. Debarment of representatives – (1)(a) An authorised financial services provider must debar a person from rendering financial services who is or was, as the case may be –*

- (i) a representative of the financial services provider; or*
- (ii) ...*

*If the financial services provider is satisfied on the basis of available facts and information that the person –*

- (iii) does not meet, or no longer complies with, the requirements referred to in section 13(2)(a); or*
- (iv) has contravened or failed to comply with any provision of this Act in a material manner." (Emphasis added)*

21. In terms of section 4(3) of the FAIS Act a representative must be given notice of the FSP's intention to debar, which notice must set out the grounds and reasons for debarment; the representative must be given a copy of the FSP's debarment

policy; the FSP must afford the representative a reasonable opportunity to make submissions; and the FSP must consider those submissions prior to debarring a representative.

22. There is no merit in the applicant's contention that she was not aware that she could be debarred because she did not attend the disciplinary hearing. The notice to attend the disciplinary hearing included a notification that if the allegations were proven, it may lead to her dismissal and/or where appropriate, debarment in terms of the FAIS Act. There is no dispute that she received the notice.
23. According to Capitec, no disciplinary enquiry was held after the applicant had resigned and that it is standard practice to record the disciplinary outcome as a guilty verdict if an employee resigns in the face of allegations of serious misconduct due to a negative inference that is drawn when an employee declines to make representations. In its detailed Debarment Reasons to the applicant dated 29 January 2025, Capitec recorded that the applicant's verdict was a dismissal with immediate effect due to the fact that the applicant was found guilty of the allegations in question. According to the bank, the only reason why this was recorded was because the applicant chose not to attend the disciplinary inquiry and put forward no defence to the allegations of misconduct. According to it, notwithstanding any guilty verdict in a disciplinary process, Capitec's Debarment Policy provides that it is required to make an independent

assessment of the facts and information in order to determine whether a debarment process should proceed.

24. The applicant did not defend the allegations of misconduct in the disciplinary hearing. She chose instead to resign with immediate effect in order to avoid the hearing. This does not assist her. But this did not preclude the respondent from taking steps to debar her.
25. Capitec took steps to debar the applicant on the basis that she was dishonest. The debarment process is a separate independent statutory process which requires that a financial services provider must take steps to debar a representative under certain circumstances. The applicant requested information and documents before the Debarment Panel convened on 12 December 2024 to consider the decision. She participated in the process and made submissions to deal with the basis for the intended debarment notwithstanding that there was no record of the disciplinary inquiry.
26. I can find no basis that the debarment procedure followed by Capitec was irregular or unfair in any way. The applicant was given notice of Capitec's intention to debar her. The notice set out the grounds for debarment and Capitec's debarment policy was attached thereto. Moreover, the applicant was afforded a reasonable opportunity i.e., a period of ten days to proffer a response to the said grounds. Accordingly, the debarment procedure followed by Capitec

was compliant with the FAIS Act. There are no grounds for setting aside the debarment on the basis that the process was irregular.

27. Turning to the substantive challenge, the applicant relies on several grounds to set aside the decision.
28. According to Capitec, there are no substantive grounds for reconsideration as the matter was properly investigated and, the facts on a balance of probabilities, support a finding of dishonest conduct and of conduct lacking integrity.
29. The basis upon which the applicant was debarred was that she was dishonest when she performed the debit order switch of bank accounts, and that she had included fictitious banking account details of another bank.
30. Capitec's Debit Order Switch Policy provides the following for a valid debit order switch which includes:
  - 30.1. that the customer's bank statement is submitted, which reflects which debit orders the customer intends to switch to a Capitec bank account;
  - 30.2. that service consultants are required to indicate any debit orders to be excluded and any other information that the customer provides that is relevant to the switch in the comments field of the banking system flow;  
and

- 30.3. old banking details where the debit orders are currently deducted should be provided.
31. The Policy is clear that banking details which do not belong to a customer cannot be included in the switch and would not be compliant with the respondent's policy. But this does not have to be expressly provided for as it is implicit in the Policy that the bank account information must be that of the customer. The Policy specifically provides for a switch to a Capitec bank account. The Policy makes provision for service consultants to contact the bank's Conversion Team should they require any assistance with the switch. The forensic investigation and report also confirm that since the client sought to switch her debit orders from one Capitec bank account to a new Capitec bank account, the switch could only have been made in respect of a Capitec-to-Capitec bank account, and that there could have been no confusion in this regard.
32. According to Capitec, it's branch employees may qualify for a Team Awards Incentive which is a discretionary quarterly bonus that is payable subject to the branch team meeting various Key Performance Indicators (KPI's). One of the KPI's is debit order switching where a customer's existing debit orders are transferred from an existing non-Capitec account to a Capitec account. i.e., a switch from one Capitec account to another Capitec account does not qualify for the incentive.

33. Capitec does not dispute that Mabalane, the applicant's erstwhile line manager and Assistant Branch Manager, had approved the applicant's request for the debit order switch. Mabalane would also have benefited from the Team Awards Incentive.
34. I find it difficult to accept that the applicant was not aware of the respondent's policy relating to debit order switches. She does not materially dispute knowledge of the Policy. Her position is rather that the Policy does not provide for the type of debit order switch that she had performed.
35. Capitec contends that the inescapable conclusion is that the applicant manipulated the debit order system so that she could reach her target for the month. It relies on the applicant's statement where she refers to the fact that she was told that she had not yet met her targets.
36. Although I do not fully agree with the respondent's approach which it adopted in relation to the outcome of the hearing and its recordal that the applicant was found guilty of misconduct in the internal hearing when a hearing was not held, this is immaterial to the debarment process and immaterial to the question whether the applicant met the fit and proper requirements of honesty and integrity. A fresh inquiry was conducted by the Debarment Panel, and the applicant was afforded an opportunity to make representations as to why she should not be debarred, a procedure which she participated in. The debarment

process in terms of Section 14(1) of the FAIS Act is not dependent or conditional upon a disciplinary hearing.

37. Having considered the applicant's substantive grounds upon which her reconsideration application is predicated, there is no credible defence as to why she used an entirely different bank when she performed the debit order switch, a bank account which did not belong to the customer. The applicant did not address this issue in any meaningful manner. The customer herself also did not provide the applicant with any FNB bank account details, which the applicant does not dispute.
38. It is of limited probative value as to who opened and closed the Capitec bank account of the customer, as the more material issue is that the applicant knowingly used an FNB account number that did not belong to the customer in order to effect the debit order switch.
39. There is no basis to interfere with the applicant's debarment.
40. The application is dismissed.

**\_\_Sgd TJ Golden SC\_\_**

**TJ GOLDEN SC**

On behalf of the Panel consisting of Judge D Davis and Ms PR Long

9 September 2025