

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FSP18/2021

In the matter between:

NTOBEKO GODFREY MDLULI

APPLICANT

and

FIRST NATIONAL BANK a division of

FIRSTSTRAND BANK LIMITED

RESPONDENT

DECISION

1. The applicant applies for the reconsideration of his debarment as financial service representative in terms of sec 14 of the Financial Advisory and Intermediary Services Act 37 of 2002 by the respondent, his former employer and an FSP.
2. The present application is under sec 230 of the Financial Sector Regulation Act 9 of 2017. The parties waived their right to a full hearing.
3. The debarment was because of a finding that the applicant lacked the quality of honesty. He had been found guilty of the following acts of misconduct:

Dishonesty (in terms of paragraph 4.2.1 of the Bank's Disciplinary Code and Procedure) in that he recorded the incorrect sign-in and sign-off times in the attendance register from 9 to 12 June 2020, 17-19 June 2020, 25-26 June 2020 and 29 to 3 July 2020.

Dishonesty (in terms of paragraph 4.2.1 of the Bank's Disciplinary Code and Procedure) in that he was not on the bank's premises on the 22nd of June 2020 and

he failed to capture the relevant leave on the bank's system, by not capturing leave he was dishonest in that his leave balance did not deplete accordingly.

4. The applicant admitted his 'mistakes' but denied that it was because of dishonesty.
5. The Bank's attitude is that it is obliged to debar the applicant and for this it relies on the following extract from *Financial Services Board v Barthram*, [2015] 3 All SA 665, 2018 (1) SA 139 (SCA):

**“The debarment of the representative by a FSP is evidence that it no longer regards the representative as having either the fitness and propriety or competency requirements. A representative who does not meet those requirements lacks the character qualities of honesty and integrity or lacks competence and thereby poses a risk to the investing public generally. Such a person ought not to be unleashed on an unsuspecting public and it must therefore follow that any representative debarred in terms of section 14(1), must perforce be debarred on an industry-wide basis from rendering financial services to the investing public.”**

6. The Bank emphasised the last sentence, but it did not take note of the middle sentence. The dishonestly in this case, if any, did not indicate that he posed a risk to investing and unsuspecting public. The issue was more a labour issue than a FAIS issue and it appears that the Bank conflated the two.
7. Attention is drawn to the the decision of the Tribunal of Osman against the present Bank.<sup>1</sup> The test is whether the dishonesty, negligence or incompetence or mismanagement is sufficiently serious to impugn the honesty and integrity of the person concerned. This test has not been satisfied on the facts.

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<sup>1</sup> <https://www.fsca.co.za/Enforcement-Matters/Publications%20and%20Documents/Decision%20-%20Fahida%20Osman%20v%20FNB.pdf>.

8. The application succeeds and the debarment is set aside.

Signed on behalf of the Tribunal on 21 May 2021.

A handwritten signature in dark ink, appearing to read "LTC Harms", enclosed within a thin black rectangular border. The signature is written in a cursive style with a large initial 'L' and a long horizontal stroke at the end.

LTC Harms (deputy chair)