



In the matter between:

THE COMPLAINANT

and

THE SAVINGS AND CREDIT COOPERATIVE SOCIETY LIMITED RESPONDENT

STATEMENT OF DETERMINATION OF COMPLAINT GIVEN IN TERMS OF SECTIONS 75 AND 75 OF THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT NO 2 OF 2010 (THE FSRA ACT)

INTRODUCTION

1. This complaint relates to the business of a savings and credit cooperative society in which Mr. XX (the Complainant) was a member of the Savings and Credit Cooperative Society Limited (the Respondent). The Respondent is a licensed financial services provider per the FSRA Act, 2010.

THE COMPLAINT

2. On 28 February 2020, the Complainant submitted a sworn statement of her complaint (the Complaint Form). The complaint form had supporting documents, including:

DOCUMENT	DATED
Letter to Respondent	2 March 2020
Premium Receipt History (Funeral Services)	23 September 2019
Salary Advice Slip	20 September 2019
Detailed Policy Ledger	28 October 2020

The complaint form presents the following facts:

- 2.1. The Complainant joined the Respondent as a member sometime in December 2008.
- 2.2. The Complainant was contributing towards Life Assurance as was shown in the receipts attached. The product to which Complainant was contributing towards is a burial scheme or policy.
- 2.3. The burial policy would pay out in the event he, his wife, 5 children below the age of 18 died.
- 2.4. The Complainant states that the receipts of his policy indicate that even though respondent deducted the premiums, the receipts with Life Insurance Limited suggest otherwise.
- 2.5. The Complainant asks that the Ombudsman investigates the way his burial policy was treated by the Respondent, particularly the payment of his premiums. He also asks for a refund of his savings plus any accrued interest, including the sum of his premiums currently held by the Respondent.

THE RESPONSE

3. On 20 April 2020, the Respondent submitted a statement responding to the complaint. The response had several supporting documents, including;

DOCUMENT	DATE
Letter to Complainant	11 February 2021
Life Insurance Limited policy ledger	28 October 2020
Loan Application Form (Long Term) – E2000	9 September 2009
Loan Application Form (Long Term) – E3000	30 April 2010
Loan Application Form (Long Term) – E3000	7 September 2010
Loan Application Form (Long Term) – E7000	11 October 2010
Loan Application Form (Long Term) – E18 000	11 January 2012
Loan Application Form (Mid Term) – E5000	25 June 2012
Loan Application Form (Short Term) – E1000	21 December 2012
Loan Application Form (Long Term) – 10 000	18 January 2013
Loan Application Form (Mid Term) – E5000	30 August 2013
Loan Application Form (Long Term) - E30 000	28 November 2014
Loan Application Form (Mid Term) – E5000	17 July 2015
Loan Application Form (Short Term) – E1000	10 December 2015
Loan Application Form (Mid Term) – E5000	18 November 2016
Loan Application Form (Long Term) – E17 000	5 June 2016
School Saving Withdrawal Form – E1100	8 April 2015
School Saving Withdrawal Form – E5000	1 February 2017
School Saving Withdrawal Form – E1600	20 January 2014

4. The following facts can be extracted from the response:

- 4.1. The Complainant is a member of the Respondent.
- 4.2. The Complainant had two (2) savings schemes with Respondent; namely, Ordinary Savings and School Savings.
- 4.3. The Complainant has a burial plan (policy), but it is not for saving.
- 4.4. Between the year 2009 and 2017, the Complainant applied and received various loans with the Respondent and shown in the table above.
- 4.5. The repayment was deducted from source (salary-based deductions) until Complainant was retired in June 2017.
- 4.6. The balance of savings is E14 619.15 (Fourteen Thousand Six Hundred and Nineteen Emalangenzi fifteen Cents).
- 4.7. The Mid-Term loan balance stands at E1507.23 (One thousand five hundred and seven Emalangenzi twenty – three Cents).
- 4.8. The Long-Term balance stands at E31 327.24 (Thirty – One thousand three hundred and twenty-seven Emalangenzi twenty – four Cents). In addressing the savings deductions, the Respondent mapped the history of the source deductions and can be tabulated as follows:

PERIOD OF DEDUCTION	AMOUNT DEDUCTED PER MONTH DURING THAT PERIOD
December 2008 – January 2010	E500

February 2010 – June 2011	E1000
July 2011 – June 2012	E1500
July 2012 – August 2013	E1967
September 2013 – February 2014	E1472
March 2014 – December 2014	E1772
January 2015 – July 2015	E2282
August 2015 – November 2015	E2282
December 2015 – November 2016	E2304.61
December 2016 - January 2017	E2728.13
February 2017 – June 2017	E1733

4.9. The deductions were made towards the Burial Scheme, Ordinary Savings as well as School Savings.

THE REPLIES

5. The parties exchanged replies. However, there were no new issues raised in the replying documents. The replies therefore amounted to clarification on issues raised by each party on their substantive documents (Complaint Form for the Complainant and Response from the Respondent).

DETERMINATION AND REASONS THEREOF

6. It is the role of the Ombudsman to determine whether the Complainant's burial scheme was fairly dealt with by the Respondent? Further, the Ombudsman has been called upon to determine whether there is cause for a payment of all savings (including the burial premiums) of the Complainant's plus any interest accrued thereon, including the value of his shares with the Respondent.

7. In assessing the above, both versions of the parties were investigated. The following are common cause facts-

- 7.1. The Complainant was a member of the Respondent having joined sometime in 2008.
- 7.2. The Respondent advanced several loans to the Complainant in the particulars outlined in paragraph 3. above.
- 7.3. The loans have outstanding balances as captured in paragraph 4.8. above.
- 7.4. The Complainant has savings with the Respondent.

8. The following facts were found to be in contention:

- 8.1. The value or amount of savings that accrued while Complainant was a member of Respondent.
- 8.2. The balance of the savings with Respondent remains contested.

THE APPLICABLE LAW

9. The rules and procedures of a Savings and Credit Co-operative Society (SACCO) are set out in its by-laws. Section 15 of the Cooperative Societies Act, 2003 provides that these by-laws are binding upon all the members.

By-Laws to bind members

"15 (1) the by-laws of a cooperative shall, when registered, bind the cooperative and members thereof to the same extent as if they were signed by each member and contained covenants on the part of each member for himself/herself or for his / her successor to observe all the provisions of the by-laws."

Section 6 of the 2005 regulations to the above Act further states:

Compulsory by-laws

6 (1) Subject to the Act and these Regulations, a society shall make by-laws for the regulation of its affairs and the promotion of its stated objects...[emphasis added]

10. The esteemed author, Aliber (2001) said the following when giving detail and understanding on what constitutes a funeral insurance product (burial policy):

"In practice, funeral insurance is treated as a type of long-term insurance. However, the Short-Term Insurance Act allows that "accident and health" policies may be part of a short-term policy, and these in turn are defined as a contract, which triggers benefits if the insured person suffers a disability event, a health event, or a death event. However, if the policy benefits "are something other than a sum of money" (1(d)(i)), then the contract is not considered an insurance policy."¹

APPLICATION OF THE LAW TO THE FACTS

11. The Ombudsman considered the question of the burial policy and observed that it is an insurance product. The documents submitted by both parties disclose that the Complainant was a policyholder of a Family Plan, under policy number XXX0000101. As an insurance product, the Complainant cannot be said to have been saving with Life Insurance Limited. Based on the documents submitted by both parties, the Ombudsman finds that the policy is still active, and its last debit period was 1 September 2020 – 1 October 2020. Based on the above, the Ombudsman finds that the burial policy constitutes an active funeral insurance product and should be dealt with in terms of its salient terms. There is no investment component to the policy.

12. The common cause facts establish that various loans were advanced to the Complainant. In paragraph 3.1. above, the loaned amounts and their balances are outlined as well as the penal amounts levied against the same. Per clause 5 of the by-laws,

"DUTIES OF MEMBERS

Every member of the Society shall:

(a) Honour his/her obligations timely..."

13. The question of whether the Complainant is entitled to his savings rests on whether he has honoured all his obligations with the Respondent. The Respondent has provided detailed accounts of the monies lent and advanced to the Complainant. This detail has also

¹ Aliber, M., 2001. *Social Finance Programme & InFocus Programme on Boosting Employment through Small Enterprise Development, South African Microinsurance Case-Study* (No. 33). Working Paper.

included the salary deduction amounts that were made to service all obligations that Complainant had with Respondent. This is also supported by the salary advice slips (though not all of them were submitted). From the submitted documents, the Ombudsman finds that the Complainant has not fully paid the monies that were lent and advanced to him. While in his reply dated 20 April 2021 Complainant attempted to dispute these facts, the overwhelming evidence contained in the Loan Application Forms as well as salary advise slips compels the Ombudsman to uphold the version of the Respondent, that is, that the Complainant did not fully repay his loans.

14. With the finding above, the question of whether the Complainant is entitled to his savings remains. To answer this question, the Respondent's by-laws are instructive:

"6. WITHDRAWAL

Due notice of withdrawal shall be **within two (2) months**. Withdrawal from membership shall be effective only from the end of the financial year in which due notice to withdraw has been given. Withdrawal procedures shall be as follows:

...

c) In case of debts, the member's savings shall be used to make up for his/her debts. If the savings are not enough, the member shall be requested to sell his/her shares back to the Society to cover up for the outstanding debt...
[emphasis added]"

15. The above provision is important in understanding the above relationship as it stems from the by-laws of the Respondent. The request as contained in the Complaint Form purports to be a withdrawal of membership by the Complainant. This is because savings constitute a condition precedent of membership in cooperative societies. As a result, the Ombudsman will align with the imperatives of the by-laws and find that the Complainant is not entitled to any of his savings until he has fully complied with by-law 6.
16. Lastly, the Ombudsman emphasizes one of the seven principles of cooperative societies, that is, cooperation. Cooperative societies such as the Respondent are designed to assist members, through their economic participation, to engineer a way out of social and economic quagmires. In addressing the above, one of the principles of such enterprises articulates as follows:

"In the Alliance's definition of co-operative identity, it is important to note that although the economic dimension of co-operatives is mentioned first, shared social and cultural "aspirations and needs" are listed on an equal footing. This reflects the agenda of the founders of the modern co-operative movement who sought to transform society and saw their co-operative as more than just an economic enterprise. Social and cultural needs and aspirations stand alongside the economic dimension of all co-operatives. It affirms the idea that a co-operative is an enterprise of human commitment by and of the people who are members of it and who make a co-operative an economic, social and cultural reality. But it also can have other dimensions and purposes, for example social or cultural co-operatives that do not operate in

tradable activities in a market. In this latter case, the economic dimension is but a means to an end for a co-operative's activities."²

FINDING

17. The Complainant did not have a savings scheme with Life Insurance Limited. He does, however, have a funeral policy under policy number XXX0000101.
18. The Complainant is indebted to the Respondent due to loans advanced and lent to him within the period aforesaid. The monies aforesaid are still owing and due.
19. The Complainant has the right to withdraw from the Respondent; however, such withdrawal shall be in terms of the bye-laws of the Respondent as the principal instrument regulating their relationships.

THE ORDER

20. The complaint is not upheld.
21. No order is made against the Respondent.

THUS, DONE AT MBABANE AND CERTIFIED A TRUE AND CORRECT DETERMINATION OF THE OMBUDSMAN OF FINANCIAL SERVICES IN TERMS OF SECTION 75(5) OF THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT OF 2010.

THE OMBUDSMAN OF FINANCIAL SERVICES

² Rodgers, D., 2015. Guidance notes to the co-operative principles. *International Co-operative Alliance: Brussels, Belgium.*