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**IN THE CONSUMER AFFAIRS COURT FOR THE PROVINCE OF FREE STATE
IN THE AREA OF BLOEMFONTEIN**

Case no. **FSCAC2020/11-7**

In the matter between:

MPAI ANACLETA THEBE

Plaintiff

and

CAPITEC BANK LIMITED

Defendant

The Court is constituted as follows:

Chairperson (alternative) Advocate **P du P Greyling**

Prof **R-M Jansen** (member)

Mr **A G Sefo** (member)

Mr **G J Bredenkamp** (member)

Me **D Moeti** (member)

JUDGMENT

1. **BACKGROUND:**

- 1.1 Plaintiff took out a loan with the Defendant on the **31st August 2019**, repayable in an amount of **R9 731.15** over a period of close to six (6) months.

- 1.2 Shortly after the loan was taken out by the Plaintiff, the Plaintiff was retrenched with effective date **31st October 2019**.
- 1.3 Although not adequately pleaded and with reference to the Plaintiff's statement, dated **21 September 2020** (page 8 of the pleadings), the Plaintiff was under the impression that she had credit insurance, indemnifying her in circumstances when retrenched.
- 1.4 It is common cause that the Plaintiff did not have such credit insurance.
- 1.5 The actual complaint, therefore, is that the Defendant failed to render a service to the Plaintiff, that is, failed to provide optional credit insurance and/or credit life insurance.
- 1.6 The Consumer Protector issued summons and was the matter initially enrolled for **20 November 2020**. On the initial hearing date, the Defendant filed its special pleas and plea. The matter was postponed as to afford the Consumer Protector and the Consumer Court the opportunity to consider the defences advance therein.
- 1.7 The matter was again enrolled for **3 September 2021**.
- 1.8 Submissions were made by both the Counsel for the Defendant and the Consumer Protector. The Counsel for the Defendant was requested to file

short Heads of Argument, which was received on **13 September 2021**. The Heads of Argument was very helpful and is the Counsel for the Defendant thanked for her effort in this regard.

2. **FIRST SPECIAL PLEA:**

2.1 The first special plea, taken by the Defendant, was that the Consumer Affairs Court lacked the jurisdiction to entertain the matter at hand.

2.2 In argument, and in the Heads of Argument, Counsel for the Defendant, *inter alia*, referred to the definition of a “service” as found in Section 1 of the Consumer Protection Act, Act 68 of 2008 (“the CPA”).

2.3 The CPA defines “service” as follows:

“Service includes but is not limited to – ...

(c) *any banking services or related or similar financial services, or the underwriting or assumption of any risk by one person on behalf of another, except to the extent that any such service - ...*

(ii) *is regulated in terms of the Long-term Insurance Act, 1998 (Act 52 of 1998) or the Short-term Insurance Act, 1998 (Act 53 of 1998).”*

2.4 The failure to provide optional credit insurance is therefore an insurance issue and therefore excluded in the CPA's definition of "service".

2.5 The First Special Plea should therefore succeed.

3. In the light of the aforementioned, it is unnecessary to deal with the Second Special Plea of the Defendant and the Defendant's Plea on the merits (Plea Over).

4. **COSTS:**

Insofar as this Court has a discretion as to costs, the circumstances relating to this matter does not warrant any cost orders.

5. **ORDER:**

5.1 The Defendant's First Special Plea is upheld and the Plaintiff's claim is dismissed.

5.2 No order as to costs.

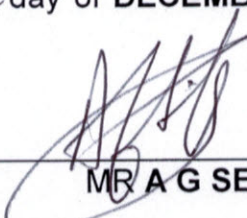
DATED and SIGNED at **BLOEMFONTEIN** on this the 1st day of October 2021.


 P DU P GREYLING
 CHAIRPERSON

DATED and SIGNED at BLOEMFONTEIN on this the 1st day of
October 2021.


 PROF M JANSEN

DATED and SIGNED at BLOEMFONTEIN on this the 1st day of ~~DECEMBER~~ ^{October}
 2020. 2021


 MR A G SEFO

DATED and SIGNED at BLOEMFONTEIN on this the 1st day of
October 2021.


 MR G J BREDENKAMP

DATED and SIGNED at BLOEMFONTEIN on this the 1st day of
October 2021.


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