

**IN THE NON-BANK FINANCIAL INSTITUTIONS TRIBUNAL OF THE
REPUBLIC OF BOTSWANA HELD AT GABORONE**

Case No: NBFIT-0013/2023

In the matter between:

OARABILE MATHABA

APPLICANT

and

**NON-BANK FINANCIAL INSTITUTIONS
REGULATORY AUTHORITY**

1ST RESPONDENT

and

**BONA LIFE INSURANCE PROPRIETARY
LIMITED**

2ND RESPONDENT

Coram: M M Baoleki Chairperson, D Makati-Mpho Deputy Chairperson,
and K F Motlhanka Member

Heard: 25 October 2023

Appearances: Applicant in Person
A. Mpe, K. Gasennelwe and K. Tlotleng for 1st Respondent
P. Keakabetse for 2nd Respondent

JUDGMENT

Baoleki Chairperson: (Makati-Mpho and Motlhanka concurring):

INTRODUCTION

1. This is a review application under section 52 of the Non-Bank Financial Institutions Regulatory Authority Act, 2016.¹ The decision under review emanates from a letter from the Non-Bank Financial Institutions Regulatory Authority (the 1st Respondent), dated 13 June 2023 under reference NBFIRA 1/9/40 (I) (57).
2. As a prelude to this judgment, there were two questions for decision before the 1st Respondent. The first question was whether or not a pension fund member who on his or her retirement entered into a transaction entailing the purchase of an annuity policy from an insurer could later call upon the said annuity policy to settle his or her personal loan(s) owed to a financial institution. The second question was whether or not section 52 (1) (c) of the Retirement Funds Act, 2022 gives a retired pension member the right to request his or her insurer to use the annuity to pay off his or her personal loan(s).
3. It is the answers given by the 1st Respondent to the questions above which triggered the Applicant to launch this review application.
4. Now coming to this Tribunal, the Applicant seeks to review and set aside the decision of the 1st Respondent, in terms of which it confirmed the decision of

¹ It is important to state following. While this Tribunal is alive to and takes judicial notice of the fact that the Non-Bank Financial Regulatory Authority Act, 2016 Act has since been repealed and replaced by the Non-Bank Financial Institutions Regulatory Authority Act, No. 21 of 2023 which came into operation on 15 January 2024, for purpose of clarity the applicable law is cited as at the date of hearing. This judgement will, however, capture in footnote, the equivalent and applicable provisions of the extant law.

~~Bona Life Insurance Proprietary Limited (the 2nd Respondent) dated 28 April 2023, declining the Applicant's request to use her annuity policy to pay off a personal loan owed to Access Bank Botswana.~~

SOURCE AND SCOPE OF THE TRIBUNAL'S JURISDICTION

5. Before dealing with the merits of this matter, it is necessary to establish the jurisdiction of this Tribunal.
6. Section 50 of the Non-Bank Financial Regulatory Authority Act, 2016,² establishes the Non-Bank Financial Institutions Tribunal (the Tribunal).
7. In terms of section 51 read with section 52 of the Non-Bank Financial Regulatory Authority Act, 2016,³ every decision of the 1st Respondent made in terms of the relevant financial services law may be subject to a review by this Tribunal at the instance of an aggrieved party. The decision at the centre of this review application concerns the Insurance Industry Act, 2015 and the Retirement Fund Act, 2022. In terms of section 2 of the NBFIRA Act, the above stated Acts are defined as financial services laws. Therefore, it follows that this Tribunal has the requisite jurisdiction to review the decision of the 1st Respondent as it was made pursuant to a body of financial services laws and affects the interests of the Applicant.

² Now section 85 of the NBFIRA Act, 2023.

³ Now sections 86 read with 87 of the NBFIRA Act, 2023.

88. Crucially pursuant to the judgment of the Court of Appeal in *Alpha Direct*,⁴ this Tribunal also accepts as settled law that policy holders have a right to raise issues relating to non-adherence to the terms of their insurance policies with the 1st Respondent as the regulatory and supervisory authority of all non-bank financial institutions in Botswana. *Alpha Direct*⁵ tells us that “many clients of insurance companies do not have the means to engage lawyers for purposes of instituting court proceedings, and, as a public interest regulator, one of the functions of the 1st Respondent is to safeguard the interests of clients of non-bank financial institutions.”⁶
9. Coming to the powers of the Tribunal, on determination of this review, the Tribunal may, confirm, amend or revoke the decision in question. Alternatively, this Tribunal may return the matter to the 1st Respondent for consideration in accordance with any directions as issued by the Tribunal, or make such orders as the Tribunal deems appropriate.⁷

THE PARTIES AND BACKGROUND

10. The Applicant is Oarabile Mathaba, a former primary school head teacher who retired from the public service in 2016.

⁴ *Alpha Direct Insurance Company (Proprietary) Limited v Non-Financial Institutions Regulatory Authority and Others*, CACGB-139-18

⁵ Above.

⁶ Per Kirby P (as he then was).

⁷ Regulation 27 of the Non-Bank Financial Institutions Regulatory Authority (Tribunal) Regulations, No. 80 of 2018.

11.1. Upon retirement, the Applicant was, in terms of the law, entitled to a one-third cash payment of her retirement benefit. She was duly paid the one-third retirement benefit. Since the Applicant's two-thirds retirement benefit balance was within the threshold for annuitisation, she was as a matter of law obliged to purchase an annuity policy. The Applicant acting in accordance with the dictates of the law duly purchased an annuity policy on 11 July 2017 in terms of which she was to be paid the sum of P8, 178.00 on a monthly basis. More with respect to the terms of the annuity policy follows below.

12. The 1st Respondent is the Non-Bank Financial Institutions Regulatory Authority. It is a statutory body established in terms of section 3 (1) of the Non-Bank Financial Institutions Regulatory Authority Act, 2016.⁸
13. The 1st Respondent is charged with the responsibility to regulate and supervise non-bank financial institutions to foster among other things, safety and soundness of non-bank financial institutions, highest standard of conduct of business by non-bank financial institutions and fairness, efficiency and orderliness of the non-bank financial sector.⁹
14. The 2nd Respondent is Bona Life Proprietary Limited, a company incorporated in accordance with the laws of Botswana and licensed to trade as a long-term insurance business under the Insurance Industry Act [CAP 46:01].

⁸ Now section 4 (1) of the NBFIRA Act, 2023.

⁹ Section 4 (1) of the NBFIRA Act, 2016. Now section 5 (1) of the NBFIRA Act, 2023.

15. The relevant factual background to the matter is briefly the following.

16. The Applicant and the 2nd Respondent entered into annuity policy on 11 July 2017.
17. In so far as is material, the relevant clauses in respect of the annuity policy are the following:
 - 17.1 on executing the annuity policy, the Applicant became an annuitant- a person to whom payment was, and is to be made in terms of the annuity policy and the life upon whom such annuity payment is dependent;
 - 17.2 the 2nd Respondent bound itself to pay to the Applicant/annuitant on a monthly basis the amount of P8, 178.00;
 - 17.3 the annuity has a fifteen (15) years guaranteed period; and
 - 17.4 the annuity shall expire on the last day of the guarantee period or the date of death of the annuitant, whichever occurs later.
18. It is not in dispute that the 2nd Respondent is complying with the terms of the annuity policy and the Applicant has, since the commencement of the annuity policy, been receiving her monthly payment of P8, 178.00 (less authorised deductions from source).

199. By means of a letter dated 27 April 2023, the Applicant wrote to the 2nd

Respondent requesting for the use of her annuity to settle a personal loan she has with Access Bank Botswana (which has run into arrears) amounting to P282, 890.37. The 2nd Respondent responded on 28 April 2023 declining the request on the ground that it is impermissible by law to transfer or cash out on an annuity as a lump sum once purchased.

20. The Applicant did not agree, and on 3 May 2023 she launched an appeal against the 2nd Respondent seeking the 1st Respondent to consider the meaning and effect of section 52 of the Retirement Funds Act, 2022 for the following reasons, that:

20.1 section 52 (c) permits deduction on benefit payable to a member in the case of a default on the repayment of any loan by deferred member, having provided proof that he or she is unemployed for six consecutive months, if such a deduction is only effected as a last resort after the board of the fund is satisfied that no other arrangement for the required payment can be made;

20.2 she has been verbally warned by Ramalepa Attorneys, being attorneys for the creditor, that if she fails to settle the loan amount owed to Access Bank Botswana within 7 days her property will be sold to recover the loan; and

2003 she has never stopped paying the monthly instalments since 2007 after retiring but the funds cannot settle the loan, instead it has accumulated arrears resulting in default in repayment that qualifies her for assistance.

21. The 1st Respondent replied on 13 June 2023 dismissing the Applicant's request to overturn the 2nd Respondent's decision. The 1st Respondent rejected the request for the settlement of personal loan(s) using the annuity benefit on the following grounds, that:

21.1 the law does not allow for an annuity to be encashed as a lump sum for any other circumstances besides on the death of the annuitant;

21.2 section 52 (1) (c) of the Retirement Funds Act, 2022 applies to deferred members and not to retirees (annuitants). Further, that as the Applicant was required to purchase an annuity from a registered insurer and has since purchased it, she is receiving a living annuity from the 2nd Respondent and governed by the Insurance Industry Act, 2015; and

21.3 whilst the 1st Respondent acknowledged the difficult circumstances of the Applicant, as a creature of statute it can only act within the precincts of the law and it has no discretion to accede to the Applicant's request.

SUBMISSIONS BEFORE THE TRIBUNAL

22. Turning to this Tribunal, the parties' contentions on the application for review are set out in some detail in their papers. They were, further, elaborated upon

in the parties' heads of argument and during oral argument before us and therefore need not be separately enumerated.

23. The Tribunal should, however, mention that the primary contention of the Applicant is that, having regard to the proper interpretation of the provision in question¹⁰, the 1st Respondent made a cruel decision as she believes that a retirement fund is meant for her proper upkeep and to save her life. The Applicant questioned the rationale for the option to encash only upon the death of the annuitant as specified by the 1st Respondent. In supporting her argument, the Applicant contended that the Retirement Fund Act, 2022 allows for encashment in the case of a default on the repayment of any loan. She went on to argue that she is wondering why she is being subjected to emotional trauma when she has pension money to save her life by paying off the Access Bank Botswana loan.

24. It is important to note that during oral argument, the Applicant went into greater details regarding her existing financial situation, however, to avoid overburdening this judgment, it suffices to state the material details as follows:
 - 24.1 by her own admission, the Applicant stated she is saddled with debts so much so that she has been handed to debt collectors who are consistently beckoning her to make good of the said debts. As an example, the Applicant stated that she has a personal loan with Access Bank Botswana which has fallen into arrears. She further stated that she has another personal loan with Letshego Botswana which she keeps

¹⁰ Section 52 (1) (c) of the Retirement Funds Act, 2022.

refinancing to try to pay her other pressing debts. Due to her inability to service these multiple personal loans, the Applicant is now in default and has been handed to debt collectors being, Veri Debts, Norman Bisset and Ramalepa Attorneys; and

24.2 while the Applicant admits that she is party to the annuity policy as between herself and the 2nd Respondent, she contends that the annuity stands as the only asset she has that may come to her assistance and therefore requests this Tribunal to review the decision of the 1st Respondent so that she may use the annuity policy to pay out her personal loans.

25. With regards to the position of the law held by the 1st Respondent (which is confirmation of the position of the 2nd Respondent) in respect of the prohibition to cash out from an annuity policy during the life of the annuitant, the Applicant stated that she cannot interpret the law as she is not legally trained. The Applicant submitted that as a pensioner in financial problems she has made efforts to procure financial assistance from other financial institutions who regrettably declined her on the basis that the 2nd Respondent does not have an arrangement with them for purposes of assisting its annuitants to procure personal loans. Left with no other choice, the Applicant stated that she approached the 2nd Respondent to seek its consent to use her annuity to pay off the personal loans, but her request was declined.

26. The Applicant closed her oral argument by emphatically and repetitively questioning the rationale behind the unavailability of an option to encash from

the annuity policy to pay off an annuitant's loans to free them from financial embarrassment, and further urged this Tribunal to hold in her favour by reviewing and setting aside the 1st Respondent's decision so that she may use her annuity to pay her personal loans.

27. If this Tribunal understands the Applicant correctly, the thrust of her argument is that since her default in the repayment of her personal loan amounts to a default in respect of payment for 'any loan' which is accommodated by section 52 (1) (c) of the Retirement Fund Act, 2022, she therefore qualifies directly for assistance.
28. The Tribunal now turns to the main submissions put forward by Mr Gasennelwe for the 1st Respondent. Without particularising the 1st Respondent's contentions as detailed in its Statement of Case and elaborated in the heads of argument, the main submissions may be summarised as follows:
 - 28.1 that the laws applicable to an individual's pension do not allow the Applicant to commute or withdraw from an annuity;
 - 28.2 the Retirement Fund Act, and the applicable Regulations state that once an annuity is purchased, the annuity policy provides guidance on how a person's annuity benefit is to be administered;
 - 28.3 while section 52 (1) (c) of the Retirement Fund Act, 2022 allows for the deduction from the pension benefit for purposes of repayment of

any loan in default, such option is only available in respect of deferred members;

- 28.4 that section 2 of the Retirement Funds Act, 2022 defines a deferred member as a member of a fund who no longer contributes to the fund but who has preserved pension rights with the fund. As the Applicant is no longer contributing to the fund, nor has any preserved rights in the fund as she has used her two-thirds fund credit to purchase an annuity with the 2nd Respondent, she is no longer a member of the fund and is therefore not eligible to benefit in terms of section 52 (1) (c);
- 28.5 further, that in terms of regulation 28 (1) (a) of the Retirement Fund Regulations, Statutory Instrument 38 of 11 April 2017, a pension is payable for the lifetime of the beneficiary if the beneficiary is the member and in terms of regulation 28 (3), once pension is outsourced through the purchase of an annuity policy, there is a transfer of all obligations from the fund in respect of the retiree (the Applicant) to the insurer (the 2nd Respondent);
- 28.6 flowing from the above, the 1st Respondent contended that as there is an extant annuity policy between the Applicant and the 2nd Respondent, all obligations transferred to the 2nd Respondent pursuant to the annuity are governed by the said annuity policy;
- 28.7 in terms of section 11 (d) the annuity policy, changes to the annuity contract are not permissible, and more importantly, the contract expires

on the death of the Applicant. As the Applicant is party to the annuity policy which states that neither party may alter or terminate the agreement prior to its expiration or the death of the annuitant, whichever occurs later, the Applicant is bound by its terms; and

28.8 in conclusion, it was submitted that the Applicant has failed to make a case for commutation of her pension annuity as a cash lump sum and the review applicant ought to be dismissed.

29. Submitting in reply for the 2nd Respondent, the Chief Executive Officer, Ms Phatsimo Keakabetse submitted that an existing annuity policy cannot be varied and is tied to the term of the annuity policy or the life of the annuitant whichever occurs later.

30. Ms Keakabetse laid great stress on the following, that:

30.1 the purpose of an annuity is to serve the life of a living annuitant, hence the guaranteed period;

30.2 the 2nd Respondent does not offer loan facilities or arrange for same, as the settling of debts is outside the purpose of an annuity product;

30.3 as the 2nd Respondent is obligated to ensure that the annuitant (the Applicant in this matter) earns the agreed sum of money for the entire term of the annuity or for the remainder of her life, it is obligated to pay for the term as agreed with the annuitant or for the rest of her life,

which ever occurs later. Therefore, there is no option to cash a lump sum of money to pay out debts whilst the annuitant is alive;

- 30.4 the mandate of the 2nd Respondent is to ensure that annuitants (pensioners) do not live in poverty therefore as an organisation they do not enter into third-party lending arrangement for utilisation by pensioners, particularly with micro-lenders in an effort to ensure a consistent and healthy life where their annuitants are able to pay for the basics such as health, food etcetera;
- 30.5 even if they were to try to arrange for the Applicant to procure a loan facility to pay off the Access Bank Botswana debt, it simply means that the 2nd Respondent is helping her get from one debt into another debt which will still need to be repaid; and
- 30.6 more significantly, that the arrangement of loans between annuitants and financial institutions is beyond the scope of an annuity product and mandate of the 2nd Respondent.
31. Turning to the 2nd Respondent's heads of argument, the main submissions therein may be conveniently summarised as follows:
- 31.1 the Applicant is not entitled to have her debt settled from her annuity;
- 31.2 in terms of section 52 (1) (c) of the Retirement Fund Act, payment has to be made by a licensed fund from the benefit of a deferred member

and neither is the 2nd Respondent a fund in terms of the Act nor is the Applicant a deferred member of the fund;

- 31.3 as the Applicant ceased to be a member of the fund when she purchased the annuity from the 2nd Respondent, the annuity contract is the governing framework. In terms of the annuity policy, there is no allowance for payment of lump sum save for payment to the Applicant's nominated beneficiaries in the event of the Applicant's death during the guaranteed period; and
- 31.4 as the 2nd Respondent has no legal obligations under the Retirement Fund Act to honour the Applicant's claim, and similarly does not have any contractual obligation to do so under the annuity policy, the 2nd Respondent submitted that the Applicant's review application should be dismissed, and that the decision of the 1st Respondent be upheld.
32. The Applicant was given an opportunity to respond to the submissions of the Respondents. On rebuttal, the Applicant admittedly stated that on drafting the review papers her focal point was solely the phrase "in the case of a default in the repayment of any loan," which gives a wide meaning that covers all loans that are in default. She conceded to the fact that she did not consider the term "deferred member" and its meaning thereto. Once again, the Applicant further questioned the rationale for having an annuity that locks the annuitant's money until they die and cannot be used to help them pay out their debts whilst alive.

ISSUES

33. The issue for determination in this review application is whether the Applicant has made out a case for the review of the 1st Respondent's decision, that is to say, whether the decision complained of is liable to be set aside as contended by the Applicant. Put differently, is the 1st Respondent's decision in terms of which it held that section 52 (1) (c) of the Retirement Funds Act, 2022, is inapplicable to the Applicant's case, and further that that the annuity policy once executed is for life and cannot be encashed as lump sum except on the death of an annuitant during the guaranteed period liable to be set aside.
34. For the sake of clarity, the Tribunal will firstly address the arguments in relation to the applicability of section 52 (1) (c) of the Retirement Funds Act, 2022 and will move on to the arguments in respect of the nature and legal consequences of an annuity policy.
35. Whereas the Applicant put a forceful argument that a proper interpretation of section 52 (1) (c) of the Retirement Fund Act, 2022, comes to her rescue as it provides for encashment in the case of a default on the repayment of any loan, both the 1st and 2nd Respondent relied squarely on the same section 52 (1) (c) of the Act and contended that the Applicant has misinterpreted the provision in question. The Respondents argued along the same line that section 52 (1) (c) of the Act is only applicable in respect of a licensed fund who may deduct from a member's benefit in case of a default on the repayment of any loan by the deferred member. The Respondents argued that since the Applicant is a retired member of the fund, and not a deferred member, she is disqualified from placing reliance on the provision in question. The 2nd Respondent further

argued that the provision is only applicable to a licensed fund while the Respondent itself is a long term insurer.

36. The Tribunal has dispassionately given thought and weighed the contending arguments from both sides.
37. To the extent that the Tribunal understands the Applicant's argument, it amounts to a misstatement of both the legal position and the facts. With regards to the legal position, the starting point is section 52 (1) (c) of the Retirement Funds Act which provides as follows:

*"Notwithstanding section 49, a licensed fund may deduct from a benefit payable to a member or to his or her dependent or nominees-
(c) in the case of a default on the repayment of any loan by a deferred member, having provided proof that he or she is unemployed for six consecutive months, if such a deduction is only effected as a last resort after the board of the fund is satisfied that no other arrangement for the required payment can be made."*(underlined for emphasis)

38. Upon a careful reading of the above quoted section 52 (1) (c) of the Retirement Funds Act, 2022 what emerges from there are conditions which need to be met in order for one to qualify for a deduction from their pension benefit. First, this provision is specific to a licensed fund. Second, it is in respect of a default on the repayment of any loan by a deferred member¹¹. Third, there must be proof that the deferred member has been unemployed for six consecutive months.

¹¹ In terms of section 2 of the Act, a deferred member means a member of a fund who no longer contributes to the fund but has preserved pension rights with the fund. An example that comes to mind as to who may qualify as a deferred member is a person who has resigned from the fund but has not attained the age of retirement.

Fourth, such a deduction must be effected as a measure of last resort only after the board of the fund is satisfied that there are no other arrangements that may be made to make good of the payment.

39. It is beyond debate that the 2nd Respondent is not a licensed fund. Instead, it is a long term insurer that issued the annuity policy. It equally admits no argument that the Applicant is not a deferred member, but an annuitant or a retired fund member. Significantly, the board of the fund has no capacity to pass a resolution (in respect of the Applicant's case) authorising a deduction from the fund pursuant to the provision in question as the Applicant is not a deferred member of the fund and certainly has no pension benefits sitting with the fund. Further, it is important to note that the Applicant falls squarely within the definition of a pensioner, which is a member of the fund who has retired and is in receipt of an annuity¹².
40. Based on this clear statutory provision, it is evident that the Applicant has misinterpreted the law, and misjudged the facts in respect of her falling within the definition of a deferred member and further overlooked the fact that the 2nd Respondent is not a licensed fund. Therefore, this Tribunal finds merit in the Respondents submissions that section 52 (1) (c) of the Retirement Funds Act, 2022 has no application in this case. This Tribunal aligns itself with the reasoning thereto and sees no reason why the decision of the 1st Respondent must be reviewed and set aside.

¹² Section 2 of the Act.

44.1. In the result, it cannot successfully be contended that the decision of the 1st

Respondent is liable to be reviewed and set aside for want of compliance with the dictates of section 52 (1) (c) of the Act.

42. Now coming to the arguments in respect of the nature and legal consequences of an annuity policy.

43. Whereas the Applicant argued that an annuity should not be subject to the life of the annuitant but ought to have an option to be encashed to help the annuitant pay off her debts, the Respondents countered by arguing that the nature and purpose of an annuity is such that it subsists for the agreed term or for the life of the annuitant, whichever occurs later.

44. As the basis for its refusal to permit the Applicant to encash from the annuity policy, the 1st Respondent relied upon clause 19.1 and 19.2 of the annuity policy, which provides as follows:

SECTION 19: EXPIRY DATE

"19.1 The contract expires on the death of the insured should there be no guarantee period.

19.2 in the event that this contract is subject to a guarantee period, this contract shall expire on the last day of the guarantee period or the date of the death of the annuitant, whichever occurs later."

45. Plainly, this clause in our view permits of one construction only, viz, the clear legal position is that the annuity policy will only expire on the death of the

Applicant, or upon the expiration of the 15 years guarantee period, whichever takes place later.

46. With the legal position as plain as it is, there are two obstacles in the way of the Applicant's argument. First, the Applicant's annuity policy is tied to a guarantee period which is set to lapse in 2032. Secondly, since the provision declares that even upon the expiration of the guarantee period the policy will remain in force as long as the Applicant is alive, the fact that the Applicant is alive solidifies the policy into effect. Significantly, and that which is abortive of the Applicant's case is the following. For the reason that clause 2 of the annuity policy defines the Applicant as an annuitant, a person to whom payment was, and is to be made in terms of the annuity policy and the life upon whom such annuity payment is dependent, that must mean there is no substance in the Applicant's submissions.
47. So, in the Tribunal's view, the 1st Respondent correctly applied its mind and we find merit in its submissions that since the Applicant has purchased an annuity in terms of which the obligation to pay is tied to, and dependent on the life of the Applicant, such an annuity cannot be encashed as a cash lump while the Applicant is still alive.
48. Also, if there is any doubt in the Applicant's mind as to the appropriateness of the terms of the annuity policy, more especially that she has characterised the effects of the annuity policy as cruel and insensitive to her plight¹³, then the

¹³ See page 4 of the paginated bundle.

below statutory provision conclusively provides an answer, unpalatable as it maybe.

49. In terms of regulation 28 (1) (a) of the Retirement Fund Regulations, Statutory Instrument 38 of 11 April 2017, a pension is payable for the lifetime of the beneficiary if the beneficiary is the member. In the premises, the terms contained in the annuity policy that the Applicant is urging this Tribunal to disregard are a restatement of the statutory law. Thus, there is no basis to deviate from the decision of the 1st Respondent.
50. It follows from the above that, in the judgment of the Tribunal, none of the grounds of review raised by the Applicant which are the result of a misunderstanding of the law can succeed, and there can only be one outcome, namely that-
 - 50.1 The review application is dismissed with no order as to costs.
 - 50.2 The Parties are advised that any person who is dissatisfied with the decision of this Tribunal may, within 28 days of delivery of this decision, appeal to the High Court.
51. Before we conclude our judgment, there is one aspect that this Tribunal needs to lay emphasis on, and it is this: the need for the industry to educate members of the public about the non-bank financial system; this remains one of the fundamental objectives that demands action. For the 1st Respondent, the law is, and has always been clear on the issue. In terms of the repealed section 4 (2)

(c) of the Non-Bank Financial Institutions Regulatory Authority Act, 2006, which now appears as section 5 (2) (c) the Non-Bank Financial Institutions Regulatory Authority, No 21 of 2023,¹⁴ it is expressed in no uncertain terms that one of the primary functions to be carried out by the 1st Respondent is the promotion of public understanding of the non-bank financial system.

52. Time and time again during hearings before this Tribunal, it becomes apparent that the public has very little to no understanding of the non-bank financial system. As an example, in this matter it was clear that the Applicant did not appreciate the purpose of an annuity, the legal consequences of executing an annuity policy, let alone understood what a deferred fund member of the fund is, or appreciated the difference between an active fund member, a retired fund member, and a deferred fund member.
53. To further demonstrate the public's complete lack of understanding of the non-bank financial system, and in particular, retirement funds, while the Applicant was seeking to have her annuity encashed as cash lump sum so as to pay off her personal loan with Access Bank Botswana, she was surprisingly still expecting that even if she was successful, the obligation of the 2nd Respondent in terms of the annuity policy, that is, the monthly payment of P8, 178.00 for the balance of her life remain in force. The Applicant cannot eat her cake and have it. This goes to show that the Applicant on raising the issue of encashment of an annuity, did not appreciate the legal implications in the event this Tribunal agreed with her position.

¹⁴ It is to be noted that the Act came into operation on 15 January 2024.

54. In this connection, this Tribunal cannot do better than to repeat what is said in the judgment of **Pelotshweu Modimooopelo v Non-Bank Financial Institutions Regulatory Authority, Case No. NBFIT-005/2022**, that the industry in general, and the 1st Respondent in particular, must join hands with its stakeholders in promoting the public's understanding of the non-bank financial system. For without the public understanding the workings of the non-bank financial system, the attainment of fairness, efficiency and orderliness of the non-bank financial sector and stability of the financial system will remain elusive.

55. Finally, this Tribunal cannot conclude without expressing its indebtedness to Ms Keakabetse for the 2nd Respondent, who in a simplistic, non-technical and non-legalist way, explained the purpose of an annuity and its benefits, and emphasised the point that insurers are not there to broker loans with micro-lenders for the benefit of their annuitants as to do so not only falls outside their mandate but also tend to encumber the annuitants with debts and deprive them from living a healthy life that an annuity strives for. This is perhaps the model approach to be adopted by the 1st Respondent in its public outreach campaigns so as to ensure an impactful public education and thorough understanding of the Botswana non-bank financial system so as to shatter the public's illusion of seeing an annuity as a liquid asset that may be called upon at the convenience of the annuitant.