

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

**CASE: NBFIT 005-2023**

In the matter between:

**HOLLARD INSURANCE COMPANY  
OF BOTSWANA**

**APPLICANT**

and

**NON-BANK FINANCIAL INSTITUTIONS  
REGULATORY AUTHORITY**

**FIRST RESPONDENT**

**TSWANA LINK (PROPRIETARY) LIMITED**

**SECOND RESPONDENT**

**COMPLETE INSURANCE BROKERS**

**THIRD RESPONDENT**

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

---

**JUDGMENT**

---

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

*Introduction*

[1] This review finds its genesis in the decision and reasons of NBFIRA contained in a letter dated 29 March 2023, referenced CNBFIRA 9/1/1/11- IV (10). The history is briefly this. Tswana Link took up a motor comprehensive insurance policy with Hollard over its motor vehicle, a Toyota Hino truck with registration number B 374 BLR. Complete Insurance Brokers (Complete) were the insurance broker who acted on behalf of Tswana Link -the Policyholder, in the placement of the insurance policy with Hollard -the insurer.

[2] The Policyholder had an accident with the insured vehicle and lodged a claim for cover with Hollard. However, the claim was repudiated by Hollard on the basis that the Policyholder's premiums had not been paid timeously. The Policyholder

took issue with the Hollard repudiation, and laid a complaint against Hollard with the Non- Bank Financial Institutions Regulatory Authority (NBFIRA). It did so on one principal ground. That there has not been any policy breach as alleged by Hollard in that the Policyholder had paid all its premiums as further confirmed by Complete who wrote to Hollard to inform it that the Policyholder had abided by its obligation to pay premiums, and, in fact, confirming in writing that Complete had been receiving the said premiums from the Policyholder.

- [3] NBFIRA considered the complaint and issued its decision. The decision is against Hollard, and in favour of the Policyholder. The Tribunal quotes in full measure the NBFIRA decision because any attempt to paraphrase or condense the reasoning runs the risk of diluting its essence and impact even if only partially. The decision reads:

**“Tswana Link (PTY) LTD’s Complaint against Hollard Insurance Company of Botswana**

1. The above subject matter refers.
2. The NBFIRA refers to Tswana Link’s complaint regarding the repudiation of their claim due to non-payment of premiums.
3. In assessing the submissions made by Tswana Link, Complete Insurance Brokers, who is the client’s broker and yourself, the following were noted:
  - (i) Complete Insurance Brokers through its representative Mr Kitso Nkwe confirmed through a correspondence that was sent to Hollard Insurance Company on 6 October 2022 that Tswana Link made payments directly to Complete Insurance Brokers and that according to its record, they have never missed any premium payments.
  - (ii) On 23 February 2023 Complete Insurance Brokers informed Hollard Insurance Company that its Accounts Department does not have any record of premium payment.
  - (iii) There is some payments made by Tswana Link which have been receipted by Complete Insurance Brokers and signed for by Kitso Nkwe. Additionally there is an account reconciliation which indicated that some premiums were paid to Complete Insurance Brokers.
4. Based on the contradictory statement made by Complete Insurance Brokers as per point 3(1) and 3(ii) above, NBFIRA is of the view that the client did pay the premiums as previously

confirmed by Complete Insurance Brokers on 6 October 2022 and that they were not remitted to Hollard Insurance Company.

5. NBFIRA would like to bring Hollard Insurance Company's attention to section 82 (3) of the Insurance Industry Act, 2015 which reads as follows:

***"In so far as it affects a policyholder or prospective policyholder, all premiums paid to an insurance broker shall be deemed to have been paid to the insurer"***

6. The above-mentioned section means the insurance broker is acting as an intermediary and payments made to them by the policyholder should be treated as if they were made directly to the insurance company.
7. Based on the aforementioned, Hollard Insurance Company is directed to honour Tswana Link's claim on or before 7 April 2023.

Yours faithfully

Matlakala Raphaka

Director, Regulatory Services-Insurance"

- [4] The decision of NBFIRA above is contested by Hollard. Placing reliance on section 52 of the Non- Bank Financial Institutions Regulatory Authority Act, 2016, Hollard has thus launched the present review application.

- [5] Hollard is seeking to review and set aside the above decision on the following grounds:

- 5.1 "NBFIRA erred in fact and/or in law in finding: that Tswana Link had duly paid all its premiums -whether to Hollard or to the insurance broker, Complete Insurance Brokers in accordance with its policy (No. HA/CLMBPP/000041215) immediately preceding the loss in which it claimed indemnification in terms of its policy (claim no- GA/CLMBPC/000037574);
- 5.2 NBFIRA erred in fact and/or law in finding that Hollard must honour the said claim by Tswana Link; and
- 5.3 that the decision of NBFIRA must be reviewed and set aside and that Hollard's repudiation of claim by Tswana Link dated 6 October 2022 be upheld.

## *Parties*

[6] The Applicant, Hollard<sup>1</sup> is the insurance company with whom an insurance contract was placed by the Third Respondent, Complete Insurance Brokers (Complete) acting as the intermediary or insurance broker<sup>2</sup> for the Second Respondent, Tswana Link (the Policyholder<sup>3</sup>). The First Respondent is the Non-Bank Financial Institutions Regulatory Authority (NBFIRA), a regulatory authority established in terms of the Non-Bank Financial Institutions Regulatory Authority Act<sup>4</sup> mandated to regulate and supervise all non-bank financial institutions in Botswana.<sup>5</sup> It must be highlighted upfront that NBFIRA assumed jurisdiction over this matter on the basis of its power to consider insurance appeals or complaints brought before it against the decisions of the non-bank financial institutions.<sup>6</sup>

[7] The decision at the centre of this review application concerns a financial services law- the Insurance Industry Act, 2015. Therefore, this matter engages the jurisdiction of the Tribunal as it has statutory jurisdiction in respect of a review application concerning the decision of NBFIRA made in terms of the relevant financial services law.

## *Submissions before this Tribunal*

---

<sup>1</sup> Hollard Insurance Company of Botswana's, a company duly licensed and conducting general insurance business in terms of the Insurance Industry Act.

<sup>2</sup> A company duly incorporated according to the company laws of Botswana, and licenced and conducting broker business in terms of the Insurance Industry Act.

<sup>3</sup> In terms of section 2 of the Insurance Industry Act, a policyholder means a person who enters into a contract of insurance, and includes a person entitled to be provided with or enforce the policy benefits in terms of an insurance policy.

<sup>4</sup> Non-Bank Financial Institutions Regulatory Authority Act, 2016.

<sup>5</sup> Section 4 of the NBFIRA Act, 2016.

<sup>6</sup> See the case of *Alpha Direct Insurance Company (Proprietary) Limited v Non-Financial Institutions Regulatory Authority and Others*, CACGB-139-18, where the Court of Appeal pointed that policyholders have a right to raise issues relating to non-adherence to the terms of their insurance policies with NBFIRA as the regulatory and supervisory authority of all non-bank financial institutions in Botswana. Further, *Alpha Direct* 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 NBFIRA is to safeguard the interests of clients of non-bank financial institutions."

### *Hollard Submissions*

[8] Hollard submits that the nature of the insurance policy between it and Tswana Link was that premium was to be paid on monthly basis and that included a condition that the premiums were to be paid through debit order. Hollard claims that it repudiated Tswana Link's insurance claim because Tswana Link had not paid its premiums timeously. According to Hollard, before the relevant loss was suffered by Tswana Link, Tswana Link had not been paying its premiums to it. Hollard avers that although premiums were purportedly paid to Complete, being Tswana Link's insurance broker, Complete has both admitted and denied receiving any premiums from Tswana Link. NBFIRA acknowledged the contradictory statements by Complete in admitting and also denying receiving any premiums from Tswana Link, submits Hollard. Notwithstanding the acknowledgement of the aforesaid contradictory statements, so submits Hollard, NBFIRA relied on the admission and disregarded the denial by Complete without providing reasons save to state as follows:

"Based on the contradictory statement made by Complete Insurance Brokers as per point 3(1) and 3(ii) above, NBFIRA is of the view that the client did pay the premiums as previously confirmed by Complete Insurance Brokers on 6 October 2022 and that they were not remitted to Hollard Insurance Company."

[9] Hollard now brings this review application seeking an order setting aside the decision of NBFIRA. It claims that the NBFIRA decision is susceptible to be set aside as the apparent dispute of fact regarding the payment of premiums to Complete could not be resolved on the basis of documents without a hearing. If we understand Hollard correctly, it suggests that this is exacerbated by the fact that the NBFIRA decision simply says Hollard must honour the repudiated claim and does not provide reasons as to why NBFIRA chose to believe one employee of Complete over the other, that is, Kitso Nkwe's assertion that Tswana Link had paid all premiums to Complete was accepted while Augustine Kahwena's assertion that Complete has no records demonstrating payment of premiums by Tswana Link was disregarded. On this score, Hollard submits that NBFIRA's

failure to give reasons for disregarding the evidence of Augustine Kahwena and preferring that of Kitso Nkwe renders its decision a reviewable irregularity.

[10] Hollard concludes that evidence of receipt of premiums by Complete goes to the root of the dispute. This is so, argues Hollard, since section 82(3) of the Insurance Industry Act provides that premiums paid to an insurance broker shall be deemed to be paid to the insurance company. It is important to note that while witnesses were called before this Tribunal, the Tribunal does not intend to traverse the evidence of the witnesses in great detail as there were really only a few points of disagreement having a bearing on this case.

[11] Before we proceed to set out submissions by the other parties, there is one aspect that needs correction and it is this: Mr Nthomamisi submits in his heads of argument that: ‘it is trite that a review is not concerned with the correctness of the decision-maker on the merits. It is concerned with the process of arriving at the decision complained of.’ To the extent that we understand the statement, it amounts to a misstatement of the legal position as regards the review powers of this Tribunal and further conflates judicial review powers of the High Court with the statutory review powers of the Tribunal. In this regard, the judgment of this Tribunal in *BIC v NBFIRA and Resegohetse Pheresi* – NBFIT 10 of 2023 is instructive. Here is how at paragraphs 50-53 the *BIC* judgment explained it:

“The Court of Appeal in *Alpha Direct*<sup>7</sup> has already confirmed that a review by this Tribunal has none of the limitations of the High Court review.<sup>8</sup> To borrow the words of Kirby JP, parties [before this Tribunal] are entitled to a full review in terms of the Act.<sup>9</sup>” With the above position in mind, what this Tribunal may place emphasis on is

---

<sup>7</sup> *Alpha Direct Insurance Company (Proprietary) Limited v Non-Financial Institutions Regulatory Authority and Others*, CACGB-139-18.

<sup>8</sup> Above n 25 at para 10 of the cyclostyled judgement. For a logical reference point and for comparative analysis purposes, see also *Tawana Land Board v Maher* [2020] 1 BLR 589 at page 600 where the Court of Appeal cited with approval the case of *Ker and Downey Botswana (Pty) Ltd v The Land Tribunal and Another* [2001] 2 BLR 47 at p 58.

<sup>9</sup> Above at para 43 of the cyclostyled judgement. While Kirby JP was concerned with the NBFIRA Act, 2007 which has since been repealed, it is important to note that the wording of the repealed Act in respect of the

that in order to avoid mischaracterising the statutory powers of the Tribunal, a distinction must always be drawn between the review powers of this Tribunal and the common law review of the High Court.<sup>10</sup> In many respects, regulation 27<sup>11</sup> reinforces and demonstrates the fact that there are no limitations on the manner in which this Tribunal is empowered to review a decision placed before it. First, it provides plainly that such a decision may, on hearing, be confirmed, amended, or revoked, in the discretion of the Tribunal.<sup>12</sup> Secondly, it gives this Tribunal the discretion, on hearing, to return the matter to NBFIRA or the self-regulatory organisation for reconsideration in accordance with any directions issued by the Tribunal.<sup>13</sup> Thirdly and crucially, this Tribunal may on hearing a matter make such orders as it deems appropriate.<sup>14</sup> We need not belabour this point. Consequently, it is evident that the common law grounds of judicial review, being, illegality, procedural impropriety and unreasonableness do not stand in the way of the Tribunal. Accordingly, it follows that in exercising its full review powers, this Tribunal is not only concerned with the procedure or the decision making process of NBFIRA.’

#### *NBFIRA Submissions*

[12] NBFIRA’s principal submission is that in spite of a letter dated 23 February 2023 sent by Complete to Hollard stating that their accounts department has no records of receiving any premiums payments from Tswana Link, there is, nonetheless, proof of payments that were made either to Hollard or Complete. Such payments are listed at para 13 of the NBFIRA heads of argument. Crucially, according to NBFIRA, on 15 October 2022, one Kitso Nkwe (then an employee of Complete), who had been receiving payments from Tswana Link, sent an email to Hollard stating that, according to Complete’s records, the client (Tswana Link) had consistently fulfilled all premium payments. NBFIRA further submits that on 15

---

jurisdiction of the Tribunal is identical to the wording found in the NBFIRA Act, 2016 and has been transplanted word for word into the extant NBFIRA Act, 2023. Therefore, this judgment remains good law.

<sup>10</sup> Above.

<sup>11</sup> Non-Bank Financial Institutions Regulatory Authority (Tribunal) Regulations, No. 80 of 2018.

<sup>12</sup> Above n 29, reg 27 (a).

<sup>13</sup> Above n 29, reg 27 (b).

<sup>14</sup> Above n 29, reg 27 (c).

March 2023, it received a copy of a report by the insurance broker from Hollard citing claims made without corresponding premium payments. The reports mentions the existences of five clients all of whom were referred to Hollard by Kitso Nkwe, including Tswana Link. According to Complete, so submits NBFIRA, the report highlights that Kitso deviated from the usual procedure while handling Tswana Link.

[13] NBFIRA avers that the only issue of fact to be resolved by the Tribunal is whether Complete received the premiums from Tswana Link. As to the question of law, NBFIRA submits that the only question of law for decision is whether Hollard is liable to Tswana Link for the due settlement of its claim. NBFIRA submits that Tswana Link has adduced evidence to its satisfaction that Tswana Link had made payments electronically through cellphone banking to Kitso Nkwe, an employee of Complete as premium payment and that Complete through the actions of its representative or employee received the premium payment from Tswana Link. On that score, NBFIRA submits that by operation of law, section 82(3) of the Insurance Industry Act deems payment received by Complete as payment to Hollard, and therefore, Hollard is liable for Tswana Link's claim.

[14] NBFIRA concludes that for Hollard to succeed in the repudiation of Tswana Link's claim, it must prove, on a balance of probabilities, the following. First, that Tswana Link had failed to pay premiums. Second, that Tswana Link paid premiums to a person who was not authorised to receive the premiums on behalf of Hollard.

#### *Tswana Link Submissions*

[15] Mr Morapedi who argued on behalf of Tswana Link rests his arguments on two principal grounds. First, he argues that other than the bare statement that NBFIRA has erred in fact and in law, there was filed no founding affidavit or statement of facts to demonstrate how NBFIRA has erred in fact and law in arriving at its



decision. According to Mr Morapedi, it would appear that Hollard has shifted the onus on NBFIRA to defend its decision, when the onus is on Hollard to demonstrate that NBFIRA erred in fact and in law in arriving at its decision. Therefore, Mr Morapedi submitted that no factual basis having been established by Hollard in the form of a founding affidavit or statement of facts on why it alleges that NBFIRA erred. In this connection, this review application should be dismissed on that basis alone, without the need to interrogate the answering affidavit made by NBFIRA, submits Mr Morapedi.

[16] Second, and in the alternative, Mr Morapedi submits that the NBFIRA decision cannot be impugned. His argument is this: section 82(3) of the Insurance Industry Act provides that, in so far as it affects a policyholder or prospective policyholder, all premiums paid to an insurance broker shall be deemed to have been paid to the insurer subject to section 55(2). Building on his argument, Mr Morapedi placed reliance on an email from Complete on 15 October 2022. In terms of the said email, the officer confirmed that Tswana Link had made payments of its premiums and that they had never missed their premiums. There was attached to the said email, a breakdown of the payments. So, it is submitted that once Complete's officer admitted to receipt of the premiums, this should have been the end of the matter as there was compliance with the policy in terms of section 82(3) of the Insurance Industry Act. Such an admission of fact by Complete, so argues Tswana Link, was an unequivocal agreement by one party with a statement of fact made by the others, and its effect is to eliminate the necessity for the production of evidence by the later to prove that fact. Relying on the dictum of *Lily Builders v Mido Construction* 2018 1 BLR 252 (CA) at p255 which states that "a judicial admission which is conclusive, rendering it unnecessary for the other party to adduce evidence to prove the admitted fact, and incompetent for the party making it to adduce evidence to contradict it," Mr Morapedi submits that the admission by Complete to having received premiums is binding on Hollard.

[17] As to the insinuation of fraud, Mr Morapedi submits that it is trite that fraud should not be lightly inferred especially in applications. To the extent that Hollard seeks that an inference be made that there has been some fraudulent conduct on the part of Kitso, no such allegation has been made in clear terms, nor has clear and distinct evidence been adduced, submits Mr Morapedi.

*Issues*

[18] Based on the grounds of review, the issues before this Tribunal are:

18.1 Whether NBFIRA erred in fact or in law in finding that Tswana Link had paid all its premiums (whether to Hollard or Complete) in accordance with its policy immediately preceding the loss in which it claimed for indemnification. The sub issue being, whether NBFIRA's decision neglected the evidence tendered before it by Augustine Kahwena.

18.2 Whether NBFIRA correctly applied section 82(3) of the Insurance Industry Act.

[19] Straight away, let us consider the first issue. Much as it does not take much to realise the differing versions between Kitso Nkwe and Augustine Kahwena's versions, such a difference is not of much assistance on the point raised and argued by Mr Nthomamisi for Hollard. We say so because on taking a stand before this Tribunal, Augustine Kahwena did not categorically challenge the veracity of Kitso Nkwe's statements. It is important to note that Augustine did not query or dispute the fact that Tswana Link may have as a matter of fact paid moneys to Complete through Kitso Nkwe. Augustine merely stated that he did not have knowledge of payments made by Tswana Link. In particular, when Augustine was confronted with the statement from Kitso who says payments were made, he said he could not speak for Kitso. In this, Augustine was tacitly not denying the statement. Also in his testimony, Augustine indicated that "it's possible that he (Kitso) may have receive something, and may also not have received something". It was also

Augustine's testimony that Kitso was someone acting on behalf of Complete, and "that one is not in dispute."

[20] From the above, it is an admitted fact that Kitso as an employee of Complete acted for it as the insurance broker. Further, Kitso's confirmation of receipt of the premiums from Tswana Link was not successfully challenged by Augustine. While it may well be that there was misconduct on the part of Kitso as shown by a report compiled by Complete that Kitso had a habit of collecting premiums from clients and utilising them for his own benefit that does not absolve Complete, the employer. As Augustine did not discount the evidence of Kitso save to state that their accounts department do not have any records of premium payments received from Tswana Link, we find that Hollard has failed to disprove payment of premium to Complete through its representative and further failed to contradict the receipt of payments that were tendered by Tswana Link showing payments made to Kitso, the employee of Complete.

*Interpretation of section 82(3) of the Insurance Industry Act*

[21] Section 82 of the Act deals in a broad and comprehensive scope with collection of premiums by a broker and the statutory consequences imposed on the broker and the insurer on account of the collected premiums. While this case specifically raises questions about the interpretation and application of section 82(3) of the Act, the Tribunal quotes in full measure section 82.

[22] Section 82 states:

"82 (1) An insurance broker shall not receive, hold or in any other manner deal with premiums payable under a policy entered into or to be entered into with an insurer, other than a reinsurance policy, and the insurer shall not permit the insurance broker to receive, hold or in any other manner deal with the premiums

- (a) unless authorised to do so through a written agreement with that insurer; and
- (b) otherwise, than in accordance with such manner as may be prescribed.

82(2) An insurance broker shall remit the premiums collected on behalf of an insurer to the insurer according to such requirements as may be prescribed.

82(3) In so far as it affects a policyholder or prospective policyholder, all premiums paid to an insurance broker shall be deemed to have been paid to the insurer, subject to section 55 (2).

82(4) An insurance broker who contravenes a provision of this section is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.”

[23] Section 82 (1) to (3) contain three elements. *First*, it precludes an insurance broker from receiving, holding or in any manner dealing with premiums unless authorised to do so by a written agreement with an insurer or any manner prescribed by law. Of importance and crucial for the fate of this review is this: was there a written agreement with the insurer (Hollard) authorising Complete as the insurance broker to receive premiums on its behalf? The short answer is, yes there was. In terms of an Intermediary Agreement between Hollard and Complete, effective 1<sup>st</sup> November 2017 the following provisions are material for the matter at hand. Clause 5, titled “Functions entrusted to and obligations of Complete and Hollard” is determinative of the issue in respect of premium collection. In particular, clause 5.1.1.7 which is effectively dispositive of this matter provides that: Complete shall “collect and sue for premiums and deposit them into the Hollard account, whereafter Complete shall remit to Hollard details of all such premiums in terms of this agreement.” Clause 5.1.3 further states that “if Complete holds out to any person that cover is in force notwithstanding that payment of premium has not been received by Hollard by the due date, and Hollard unwittingly accepts the risk or is stopped from denying liability, Complete shall indemnify Hollard in respect of any claim which may be made against Hollard in regard to such Policy.” Clause 6.2.1 provides that “when Complete collects premium on behalf of Hollard then Complete shall pay all premiums received, less commission into the Hollard account.” From the above, it is clear that the Intermediary Agreement authorised Complete to receive premiums on behalf of Hollard. There was nothing, despite Hollard’s forceful argument, barring Complete from receiving premiums regardless of whether Tswana Link’s insurance cover was to be paid on monthly

basis or not. Equally significant, where premiums had been collected and not received by Hollard, but Complete held it out to the insured (Tswana Link) that cover was in force, Hollard was stopped from denying liability but took solace in the contractual right which states that Complete was to indemnify it of any claims made against Hollard in regard to such a policy.

[24] *Second*, it contains a substantive obligation imposed on the broker in mandatory terms- that such a broker shall remit premiums collected on behalf of the insurer to the insurer according to requirements as prescribed. It admits no arguments that dispute premiums being paid to it, Complete failed to remit premiums collected on behalf of Hollard in accordance with the terms of the Intermediary Agreement.

[25] *Third*, it contains a deeming provision insofar as it deems things to be what they are not<sup>15</sup> - subject to section 55(2)<sup>16</sup>, premiums paid to the broker by the insured but not remitted to the insurer are regarded as having being paid to, and in the hands of the insurer for purposes of avoiding the insured held to be in breach. It is important to highlight that section 55(2) is merely stated to be appreciated, but it is inapplicable to the present matter as it does not deal with payment and receipt of the first premium. The Policyholder argues, and NBFIRA held, that since payment was received by the employee of Complete- the insurance broker, the deeming effect contemplated in section 82(3) of the Insurance Industry Act was

---

<sup>15</sup> *Eastern Cape Parks and Tourism Agency v Medbury (Pty) Ltd t/a Crown River Safari* [2018] ZASCA 34; 2018 (4) SA 206 (SCA) at para 29. In this regard see also *Chotabhai v Union Government (Minister of Justice) and Registrar of Asiatics* 1911 AD 13, in which the following is stated at 33: 'The use of the word "deemed" was perhaps not a very happy one, because that term may be employed to denote merely that the persons or things to which it relates are to be considered to be what really they are not, without in any way curtailing the operation of the Statute in respect of other persons or things falling within the ordinary meaning of the language used.'

<sup>16</sup> Section 55 (1) states that "the undertaking of an insurer to provide policy benefits under a policy, other than a fund policy or a reinsurance policy, shall be suspended until the insurer has received the first or only premium, or until arrangements have been made to the satisfaction of that insurer, for the provision of the premium by debit order, stop order, credit card or other form of payment as may be approved by notice by the Regulatory Authority."

Section 55 (2) states that "where a premium payable under subsection (1) is received on behalf of an insurer, by a person authorised under section 82, the receipt of the premium shall be deemed to be a receipt of a premium by the insurer for the purposes of subsection (1), and the onus of proving that the premium was received by a person not authorised to receive the premium shall lie on the insurer".

triggered. On this interpretation, as Complete received premiums<sup>17</sup> from the Policyholder, the law imposed on Hollard-the insurer, the duty to honour the claim despite the fact that as a matter of fact, no such premiums were ever received by Hollard.

[26] With the legal position as plain as it is, we do not understand how the confusion or denial we hear about from Hollard in respect of its liability could have arisen. It could have arisen only if Hollard and Complete interpreted the decision of NBFIRA without due regard to the law, that is, the provisions of section 82(3) and the plain terms of the Intermediary Agreement- clauses 5.1.1.7, 5.1.3 and 6.2.1.

[27] In sum, there is no substance in Hollard's submissions. Hollard sought to make a case on the fact that premiums were to be made by way of debit order. The spring board for all the relief sought- main and alternative- is the idea that there is something wrong with Tswana Link paying its premiums to Complete and not by debit order directly to Hollard. Well, there is not. That must mean the point also fails consideration being had to the permissibility to pay premiums to Complete who in turn was to remit the premiums paid to Hollard, as plainly stated in the Intermediary Agreement.

[28] To put what we are saying in the preceding paragraph beyond question, as rightly submitted by Mr Morapedi for Tswana Link and Ms Mpe for NBFIRA, in view of Complete's collection of the premiums and its statement to Hollard that Tswana Link had not defaulted in its premiums, section 82(3) conclusively compels Hollard to honour Tswana Link's insurance claim. Afterwards, Hollard will be at large to insist on Complete making good its indemnification in terms of clause 5.1.3 of the Intermediary Agreement.

---

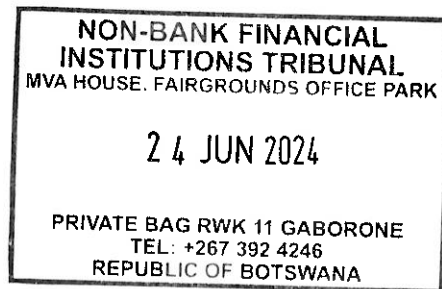
<sup>17</sup> In his testimony, Mr Dikole, the Director for Tswana Link stated that to him Kitso was the broker and the broker was Kitso. This was not tested or any issue taken with.

*Order*

[29] Consequently, the following order is made:

- 28.1 The review is dismissed with no order as to costs.
- 28.2 Accordingly, Hollard is hereby ordered to honour Tswana Link's claim within 30 days from the date of this judgment.
- 28.4 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.

**DELIVERED IN OPEN TRIBUNAL AT GABORONE ON THIS 24 JUNE 2024.**



**MM Baoleki**

**Chairperson of the Tribunal**

**D Makati-Mpho**

**Deputy Chairperson of the Tribunal**

**KF Motlhanka**

**Member of the Tribunal**

APPEARANCES

- For the Applicant: O. Nthomamisi of Minchin & Kelly (Botswana).
- For the 1<sup>st</sup> Respondent: A. Mpe, T. Modikana-In-house Counsel for NBFIRA.
- For the 2<sup>nd</sup> Respondent: L Morapedi of Lore Morapedi Attorneys.