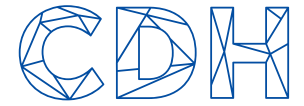


# Insurance Law

ALERT | 30 October 2024



## In this issue

SOUTH AFRICA

Dying for a cash in: Life insurance claims amid criminal investigations

For more insight into our expertise and services



## Dying for a cash in: Life insurance claims amid criminal investigations

South Africa grapples with one of the highest crime rates in the world, driven by a multitude of factors. The South African Police Service (SAPS) is significantly outnumbered by offenders, and its efforts are hampered by a lack of resources and inadequate training. Unfortunately, this situation has become a norm rather than an anomaly for South Africans.

The court system in South Africa is similarly burdened due to the challenges faced by SAPS. Many people bring their cases to court, seeking a sense of reprieve and justice, often out of desperation. In criminal cases, SAPS is required to investigate the specific offence and, ideally, apprehend the culprit. However, this ideal scenario is rarely the reality. Investigations can take years to complete, and in many instances cases remain unsolved.

Cases of fraudulent insurance claims seem to be relentlessly on the rise in South African courts, as people in dire situations think that there are easier ways in life to “cash in”, even if it means killing someone they know or love for it. Death and money have always had a symbiotic relationship but throw in a potential million-rand life insurance policy and you’ll have a “dying for a cash in” situation like no other. These instances aren’t limited to wealthy businessmen being murdered by destitute wives looking to live on insurance payouts anymore either. This issue has become more nuanced. The recent arrest of a Limpopo SAPS officer who allegedly murdered six family members to cash in on R10 million in insurance claims, illustrates that even our law enforcement is catching on to the insurance cash in trend.

This article explores the complexities that arise when life insurance policies are brought before a civil court for the payment of a claim. We highlight why insurers must become more vigilant in the wording of their policies to safeguard against any foul play where persons of interest in criminal matters are claiming a benefit from long-term insurance policies.

In the recent case of *Ncube v Liberty Group Limited Limited* [2024] ZAGPJHC 298, the High Court, Gauteng Division addressed a complex issue involving a life insurance claim and ongoing criminal investigation. The twist in this case is that the policyholder was a person of interest in a criminal investigation into the death of the life insured, who was murdered. The judgment provides insights for insurers on how to structure their policies to balance the prevention of fraud with the rights of beneficiaries/policyholders during ongoing criminal investigations.

### Background

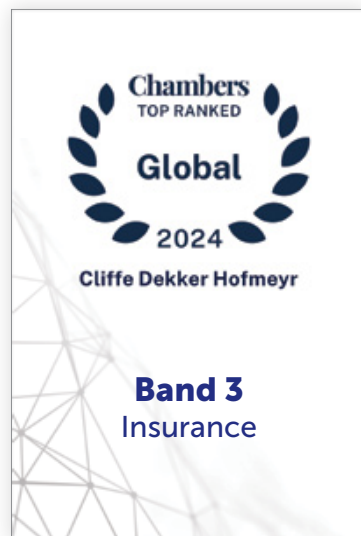
On 14 May 2023, Mr Ncube caused summons to be issued out of the High Court, Gauteng Division for payment in terms of a life insurance policy. Ncube, the plaintiff, was the policyholder of an insurance policy concluded with Liberty Group Ltd, the defendant, over the life of Mr Mhlanzi. The written agreement of insurance with Liberty was concluded on 24 July 2013, commencing on 1 August 2013. Liberty undertook to provide death benefit cover of R11,245,725, subject to a monthly premium contribution of R2,034.24, in respect of Mhlanzi’s life.



## INSURANCE LAW ALERT

# Dying for a cash in: Life insurance claims amid criminal investigations

CONTINUED



Ncube complied with his contractual obligations, which meant that all policy premiums were up to date by the time Mhlanzi died on 31 August 2017. Mhlanzi did not die from natural causes; he was murdered, and a murder investigation and inquest were subsequently conducted by SAPS. Despite the ongoing criminal investigation and Ncube being identified as a person of interest in the investigation, the policy stated that: *“the policyholder is entitled to claim payment of the benefit being the life cover where no exceptions apply”*. There was, however, a *“specific exclusion”* contained in the policy which read: *“no benefits will be paid if a claim arose directly or indirectly from the life assured or policyholder(s): wilful and material violation of any criminal law”*. Ncube lodged a claim with Liberty on 27 September 2017 as he was entitled to seek payment from Liberty at the time of Mhlanzi’s death in terms of the policy.

Liberty denied that Ncube was entitled to the claim and stated that *“Mr Ncube is only entitled to payment if he is not a person of interest in ongoing police investigations surrounding Mr Mhlanzi’s murder.”* Liberty further pleaded that SAPS had not cleared Ncube as a person of interest and therefore it had no obligation to pay Ncube in terms of the policy until he was cleared.

A summary judgment in a prior application was dismissed by the court, which led Ncube to institute the proceedings above by virtue of the fact that Liberty had the burden of providing a defence within the form of a plea. Liberty’s plea, however, included a request to stay the proceedings until SAPS completed its investigation, or until any potential criminal trial concluded.

The plea did not include the special exclusion contained in Liberty’s policy, not that it would have assisted due to its ambiguity and overly broad wording, being a *“violation of criminal law”*. In this instance, Ncube was a person of interest but was not convicted or proven to be in violation of criminal law.

Since Ncube lodged his claim with Liberty, the criminal investigation into the death of the deceased had been ongoing for five years. (Which speaks to the introductory note of this article about the impact of lack of resources, high crime rates and insufficient training on criminal investigations.) Liberty maintained that the policy explicitly stated that no benefits would be paid if a claim arose from a wilful and material violation of criminal law. In this instance, Ncube was merely a person of interest, and this term was not present in the wording of the clause that Liberty relied on when submitting its plea.

### The judgment

Liberty argued that the claim should be delayed due to the ongoing criminal investigation involving Ncube. However, the court found this argument unconvincing, emphasising that the right to claim arose at the time of death and that the insurer must assess a claim within a reasonable time. The court ruled that the pending criminal investigation did not justify delaying the claim.



**INSURANCE LAW  
ALERT**

## Dying for a cash in: Life insurance claims amid criminal investigations

CONTINUED

Liberty then requested a stay in proceedings until the criminal investigation concluded. The court referred to *Mokone v Tassos Property CC and Another* [2017] which stated that a stay in proceedings should only be granted in exceptional circumstances and that this power should be exercised sparingly. The court analysed the policy terms and found that Liberty had not pleaded any specific provisions of the policy that supported its contention, not even the specific exclusion referred to above.

The court found that Liberty's plea did not disclose a valid defence to the claim and that the prospects of establishing a defence were speculative at best. The court concluded that it was not in the interests of justice to stay the proceedings. The claim had been lodged in 2017, and the action was instituted in 2021. By 2024, Liberty was still not able to defend the claim. The court noted that Liberty had failed to plead a defence and had deferred its decision to pay out Ncube until independent third-party processes were concluded. The balance of fairness favoured the insurance policyholder, Ncube, given the prolonged delay and lack of a valid defence.

The court found Liberty's conduct vexatious, dismissed Liberty's application for a stay, ordered payment of the claim with interest, and awarded costs against Liberty due to its vexatious conduct and lack of a valid defence. This case highlights the importance of clear policy wording and the need for insurers to act swiftly and fairly in processing claims, even amid ongoing investigations.

### Conclusion

Insurers should consider several strategies to safeguard against similar issues. Clear and transparent long-term insurance policy wording is essential. It should explicitly outline conditions under which payments can be withheld, particularly in cases involving criminal investigations. The policy itself is a contract between the policyholder/beneficiaries and the insurer, so the contract must provide some reprieve for the insurer to be able to safeguard. In other words, if payment is to be pended then the policy must provide a contractual basis for the insurer to do so.

Exclusionary clauses related to criminal activities should be prominently highlighted and explained to policyholders at the time of purchase. Insurers should collaborate with law enforcement to expedite investigations involving policyholders and set reasonable timeframes for the completion of investigations. Enhanced due diligence processes and advanced fraud detection systems are crucial for verifying claims and preventing fraudulent activities.

By implementing these measures, insurers can protect themselves from potential legal challenges while ensuring that legitimate claims are processed fairly and expeditiously. This approach not only safeguards the insurer's interests, but also upholds the rights of policyholders and beneficiaries, fostering trust and reliability in the insurance industry. The tough responsibility that rests on the court in situations where it must exercise its discretion test the interest of justice and are why insurers must become more vigilant in the wording of their policies and be mindful of their contractual obligations.

**Roy Barendse and Divina Naidoo**



## OUR TEAM

For more information about our Insurance practice and services in South Africa and Kenya, please contact:



**Roy Barendse**

Executive Consultant:  
Dispute Resolution  
T +27 (0)21 405 6177  
E roy.barendse@cdhlegal.com



**Eugene Bester**

Director:  
Dispute Resolution  
T +27 (0)11 562 1173  
E eugene.bester@cdhlegal.com



**Tim Fletcher**

Chairperson  
Director: Dispute Resolution  
T +27 (0)11 562 1061  
E tim.fletcher@cdhlegal.com



**Rachel Kelly**

Director:  
Corporate & Commercial  
T +27 (0)11 562 1165  
E rachel.kelly@cdhlegal.com



**Allan Reid**

Director:  
Corporate & Commercial  
T +27 (0)11 562 1222  
E allan.reid@cdhlegal.com



**Clive Rumsey**

Sector Head: Construction & Engineering  
Director: Dispute Resolution  
T +27 (0)11 562 1924  
E clive.rumsey@cdhlegal.com



**Jaco Meyer**

Director:  
Corporate & Commercial  
T +27 (0)11 562 1749  
E jaco.meyer@cdhlegal.com



**Susan Meyer**

Joint Sector Head: Healthcare  
Director: Competition Law  
T +27 (0)21 481 6469  
E susan.meyer@cdhlegal.com



**Tim Smit**

Sector Head:  
Consumer Goods, Services & Retail  
Director: Dispute Resolution  
T +27 (0)11 562 1085  
E tim.smit@cdhlegal.com



**Roxanna Valayathum**

Joint Sector Head: Pharmaceuticals  
Director: Corporate & Commercial  
T +27 (0)11 562 1122  
E roxanna.valayathum@cdhlegal.com



**Charl Williams**

Director:  
Corporate & Commercial  
T +27 (0)21 405 6037  
E charl.williams@cdhlegal.com

**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

**PLEASE NOTE**

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

**JOHANNESBURG**

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

**CAPE TOWN**

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E [cdh Stellenbosch@cdhlegal.com](mailto:cdh Stellenbosch@cdhlegal.com)

©2024 14044/OCT

