

SOUTH AFRICA / JUDGMENT

Alexanderson obo Lebethoa v Mr Price Group Limited and Others (NCT/336370/2024/165)

[2024] ZANCT 28 (7 September 2024)

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COURT

National Consumer Tribunal

BEFORE

MC Peenze, S Mbhele, P Manzi-Ntshingila

CASE / FILE NUMBER

NCT/336370/2024/165

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/336370/2024/165

In the matter between: SEBASTIEN ALARIK ALEXANDERSON (NCRDC2351) APPLICANT on behalf of: MOEKETSI LEBETHOA CONSUMER ID: 7[...] and MR PRICE GROUP LIMITED 1ST RESPONDENT OLD MUTUAL FINANCE (PTY) LTD 2ND RESPONDENT TRUWORTHS LIMITED 3RD RESPONDENT

Coram:

Dr MC Peenze - Presiding Tribunal member

Mr S Mbhele

- Tribunal member

Ms P Manzi-Ntshingila - Tribunal member

Date of hearing

- 6 September 2024

Date of judgment

- 7 September 2023

JUDGMENT AND REASONS

APPLICANT

1. The applicant is Sebastien Alarik Alexanderson, (the applicant) a registered debt counsellor in terms of section 44(1) of the National Credit Act 34 of 2005 (the NCA) with registration number NCRDC2351.
2. At the hearing, the applicant was represented by Ms Alexandra Adams, an attorney from De Lange Attorneys Inc.

RESPONDENTS

3. The first to third respondents are registered credit providers under section 40(1) of the NCA and are collectively referred to as the respondents.
4. There was no appearance by any of the respondents or their representatives at the hearing.

TERMINOLOGY

5. A reference to a section in this judgment refers to a section of the NCA.
6. A reference to a rule refers to the Rules of the National Consumer Tribunal (the rules)[1].

APPLICATION TYPE

7. This is an application under section 165(b) to vary the consent order granted by the Tribunal on 1 July 2024 under case number NCT/330717/2024/138(1).

CONSIDERATION OF THE EVIDENCE ON A DEFAULT BASIS

8. On 8 July 2024, the applicant served a copy of the application on all parties by email and filed the application with the Tribunal. The Tribunal's Registrar (the Registrar) issued a notice of complete filing to all parties on 9 July 2024.
9. Under rule 13(2), the respondents had 15 business days from receipt of the application to serve an answering affidavit and file it with the Registrar. However, the respondents failed to do so.
10. The applicant did not file an application for a default order under rule 25(2).
11. Due to the pleadings being closed, the Registrar issued a notice of set down to all parties on 13 August 2024, setting the matter down for 6 September 2024.
12. Rule 13(5) states that any fact or allegation in the application or referral not specifically denied or admitted in an answering affidavit will be deemed to have been admitted.
13. Therefore, in the absence of any answering affidavits filed by the respondents, the applicant's application and all the allegations contained therein are deemed to be admitted, and the application is considered unopposed.

BACKGROUND

14. On 31 May 2024, the applicant applied to the Tribunal for a consent order, which was granted on 1 July 2024. The final acceptance letter received from the second respondent, Old Mutual Finance (Pty) Ltd, was included in the application before the Tribunal. The order was granted, but the second respondent's final acceptance letter was not attached to the issued order. The applicant submits that this was due to an administrative error and that the omission amounts to an obvious error. The applicant further submits that he only became aware of the error on 1 July 2023 when the issued order was received. The applicant has filed an application

in terms of section 165(b) to vary the consent order granted by including the second respondent's final acceptance letter.

CONSIDERATION OF SECTION 165

15. Section 165 provides for rescission or variation of an order granted by the Tribunal acting of its own accord or on application by a person affected by a decision or order. Section 165 further prescribes that such rescission or variation may only be granted in the following instances:
- a. When the order of the Tribunal had been erroneously sought or granted in the absence of a party affected by it;
 - b. There is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error, or omission; or
 - c. The order was made or granted due to a mistake common to all the parties to the proceedings.

CONSIDERATION OF THE EVIDENCE

16. The applicant had filed his variation application within the prescribed 20-day period after the consent order was issued.
17. The original application for the consent order cited the second respondent as a creditor and a party to the application, and its final acceptance letter was attached to the application. For some unknown reason, this acceptance letter was not included and uploaded to the issued consent order. The Tribunal attributes the failure to attach the second respondent's final acceptance letter to a bona fide administrative error. The applicant has provided a copy of the omitted letter dated 12 April 2024 for the account number ending in 4193. The omission amounts to an obvious error, which will likely cause prejudice to the consumer if not corrected. Therefore, the consent order stands to be varied by including the final acceptance letter provided by Old Mutual Finance (Pty) Ltd.

ORDER

18. Accordingly, the Tribunal makes the following order:

18.1 The application to vary the order is granted;

18.2 The order granted on 1 July 2024 under case number NCT/330717/2024/138(1) is hereby varied to include the final acceptance letter provided by Old Mutual Finance (Pty) Ltd for account number ending in 4193. The varied order is attached as “Annexure A – SA Alexanderson v Mr Price Group Ltd & 2 Others - NCT/336370/2024/165 Varied order”; and

18.3 There is no cost order.

Dr MC Peenze

Presiding Tribunal member

Tribunal members Mr S Mbhele and Ms P Manzi-Ntshingila concur.

[1] GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007 (Government Gazette No. 30225).

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