

SOUTH AFRICA / JUDGMENT

Bezuidenhout v Absa Bank Limited (NCT/292129/2023/141(1)(b)) [2025] ZANCT 21 (8 April 2025) [2025] ZANCT 21

COURT

National Consumer Tribunal

BEFORE

C Sassman, S Mbhele, A Potwana

CASE / FILE NUMBER

NCT/292129/2023/141(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/292129/2023/141(1)(b)

In the matter between: AUBREY BEZUIDENHOUT APPLICANT and ABSA BANK LIMITED
RESPONDENT

Coram:

Adv C Sassman

- Presiding Tribunal member

Mr S Mbhele

- Tribunal member

Dr A Potwana

- Tribunal member

Date of hearing

- 7 April 2025

Date of judgment

- 8 April 2025

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is Aubrey Bezuidenhout (the applicant). The applicant is a consumer, as defined in section 1 of the National Credit Act 34 of 2005 (NCA). At the hearing, the applicant represented himself.
2. The respondent is ABSA Bank Limited (the respondent). The respondent is a credit provider, as defined in section 1 of the NCA. At the hearing, the respondent was represented by Adv Robert Scholtz, instructed by Lowndes Dlamini Attorneys.

TERMINOLOGY

3. A reference to a section in this judgment refers to a section of the NCA.

APPLICATION TYPE

4. This is an opposed application in terms of section 141(1)(b). In this application, the applicant, with leave granted by the Tribunal, seeks redress against the respondent. The applicant alleges that the respondent has contravened the NCA by failing to provide him with copies of certain documents he requested.

BACKGROUND

5. On 16 October 2023, the applicant filed an application with the Tribunal for leave to refer a complaint against the respondent. In his application, he submitted that he had a mortgage loan with the respondent since 30 March 2000 and, on 12 November 2012, entered into a replacement credit agreement, and other subsequent credit agreements. The applicant alleged that the initial loan agreement failed to amortise to zero after 240 instalments and that the respondent failed to conduct affordability assessments as

required under the NCA. He further alleged that the respondent implemented undisclosed and unauthorised fees on his account and

failed to provide copies of the documents he requested to support his allegations.

6. The application followed a series of stages, prolonging the process. On 31 October 2024, the Tribunal considered the applicant's application for leave to refer his matter for adjudication on an opposed basis. The Tribunal held that the applicant's main allegations were time-barred in terms of section 166(1)(a). However, the applicant was granted leave for the Tribunal to consider possible contraventions of sections 64 and 65 as they relate to his complaint.

THE APPLICANT'S

SUBMISSIONS

7. At the hearing, the applicant indicated that he wanted the Tribunal to consider the application based on his papers and did not wish to add much, verbally. The applicant submitted that there remains no proof that he applied for any subsequent credit with the respondent after his initial mortgage loan and no proof that he received the credit.
8. In his papers, the applicant provided two lists of documents titled Annexures E and F,[1] and stated that the respondent referred to the incorrect one in its answering affidavit. He submitted that his request for documents from the respondent was clear from the start, and he is entitled to the documents he requested.
9. The applicant further submitted that although he has worked in the banking industry, he was never employed in the legal department and is a layperson with minimal knowledge about legal issues. The applicant believes that the respondent is not entitled to a cost order against him because it had ample opportunity to provide the documents he requested but failed to do so.

THE RESPONDENT'S

SUBMISSIONS

10. The respondent submitted that it has continuously maintained a line of communication with the applicant and provided him with certain documents. The respondent has attempted to engage with the applicant to resolve his complaints. The applicant has not identified which documents the NCA compels the respondent to produce or provided any proof of a bona fide request for such documents. He has also not provided proof that the respondent has refused to provide the requested documents.
11. The applicant has embarked upon a war of attrition against the respondent, bombarding it, and the Tribunal with hundreds of pages of disjointed, unordered and achronological bundles of paper. The applicant's requests for documents are a list of facetious demands for various documents, most of which are repeated throughout the application to the point where the respondent cannot discern between the requested documents.
12. The NCA does not compel the respondent to provide the documents the applicant requested. However, some documents were supplied to the applicant, some do not exist, and at least one was destroyed in a fire in 2009. The applicant's requests for documents are made to escape his obligations under his credit agreements and manufacture some damages claim against the respondent. There is no evidence that the respondent has contravened any provisions of the NCA.
13. Due to the extreme volume of documents involved, and the fact that the applicant has steadfastly forged ahead without a sustainable case, the applicant should be ordered to pay the costs of the application. The applicant has intentionally prolonged his application at the Tribunal to prevent the respondent from pursuing litigation against him in the High Court.

The respondent has had to employ attorneys and advocates to defend this unreasonably lengthy and defective application and will be unduly prejudiced if it has to cover its costs. Should a cost order not be made against the applicant, it would encourage disgruntled consumers to pursue their grudges against credit providers at the Tribunal.

CONSIDERATION OF THE EVIDENCE

14. Section 64(1)(a) states that the producer of a document that is required to be delivered to a consumer under the NCA must provide the document in the prescribed form, if any.
15. Section 65(4) states that on written request from a consumer, a credit provider must provide the consumer with a single replacement copy of a document required in terms of the NCA, without charge to the consumer, at any time within a year after the date of original delivery of that document and any other replacement copy, subject to any search and production fees permitted by regulation.
16. From the above, the NCA obligates credit providers to provide consumers with certain documents. Understandably, the sections raise the question of which documents must be provided to consumers. In the ordinary course of business, a credit provider is required to give consumers a pre-agreement statement or quotation,[2] a copy of the credit agreement concluded between the parties,[3] and periodic statements of account.[4] Consumers may further request a settlement statement[5] from a credit provider should they wish to settle their accounts early. Should the consumer default on repayments, the credit provider is further required to provide a notice in terms of section 129(1)(a) before initiating legal action against the consumer.
17. Although the above is not a closed list, the documents requested by the applicant do not fall within the ambit of what the NCA compels the respondent to provide to consumers. The applicant's request for documents consists primarily of requests for credit application documents, emails, letters, a variation agreement, and a Multiplan agreement. The Tribunal finds no section of the NCA requiring the respondent to provide these documents. Furthermore, the respondent's answering affidavit explains that no variation agreement exists between the parties, and there is no self-standing Multiplan agreement as it is a workable suite of separate loan agreements linked to a primary mortgage loan account.
18. The Tribunal is persuaded that the applicant is not entitled under the NCA to the documents he requested and that the respondent did what it reasonably could to accommodate the applicant's request for specific documents. The evidence shows that the respondent attempted to resolve the applicant's disputes amicably, and the Tribunal finds no evidence that the respondent has contravened the provisions of the NCA.
19. The respondent has requested the Tribunal to make a cost order against the applicant. Section 147(1) provides that as a general principle, each party participating in a Tribunal hearing must bear its own costs.

20. While section 147(2)(a) permits the Tribunal to make the order sought by the respondent, the Tribunal rarely exercises its discretion in favour of awarding costs. The Tribunal's discretion to award costs or not must be considered in the context of the purposes of the NCA. For the Tribunal to carry out its duties, it must encourage participation in its proceedings. The Tribunal often deals with consumers and service providers from low-income communities or persons living in remote areas. Such persons must be encouraged to bring their complaints to the Tribunal for adjudication or defend complaints against them without the fear of possible adverse cost orders being made against them. For this reason, in the Tribunal's view, there must be exceptional circumstances for the Tribunal to make a cost order in any of its proceedings.
21. The Tribunal believes that the applicant initially approached it with serious allegations, which he still believes amount to contraventions of the NCA. The applicant is a layperson who represented himself at the hearing. When referring his complaint, he would not have reasonably foreseen that the matter would be prolonged and take the course it has in attempting to prove his case. The Tribunal finds that, in this instance, the circumstances do not warrant a cost order against the applicant.

CONCLUSION

22. The Tribunal finds the respondent acted reasonably in communicating with the applicant and assisting him in attempting to resolve his disputes with the respondent. There is no evidence that the respondent contravened any provisions of the NCA or failed to provide any documents it was obligated to provide. Therefore, the application stands to be dismissed.

ORDER

23. Accordingly, the Tribunal makes the following order:

23.1 The application is dismissed; and

23.2 There is no cost order.

Adv C Sassman

Presiding Tribunal member

Tribunal members Mr S Mbhele and Dr A Potwana concur.

- [1] See Annexure E on pages 42 – 44, and 324 – 326 of the case record. See Annexure F on pages 32 – 35, and 328 – 331 of the case record.
- [2] Section 92(1).
- [3] Section 93(1).
- [4] Section 108(1).
- [5] Section 113(1).

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Prepared on 11 October 2026 · Esheria