

SOUTH AFRICA / JUDGMENT

Chagonda v Tshuki and Another (NCT/344460/2024/141/(1)(b)) [2024] ZANCT 51 (15 November 2024) [2024] ZANCT 51

COURT

National Consumer Tribunal

BEFORE

S Hockey

CASE / FILE NUMBER

NCT/344460/2024/141(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD AT CENTURION

Case number: NCT/344460/2024/141(1)(b)

In the matter between: MELVIN MASIMBA TAPIWANASHE CHAGONDA APPLICANT and LEPING
TSHUKI FIRST RESPONDENT NATIONAL CREDIT REGULATOR SECOND RESPONDENT

Coram:

Mr S Hockey

- Tribunal Member

Date of hearing (In chambers) - 15 November 2024

Date of

judgment

- 15 November 2024

LEAVE TO REFER RULING AND

REASONS

THE PARTIES

1. The applicant is Melvin Masimba Chagondo (the applicant), a consumer as defined in section 1 of the National Credit Act 34 of 2005 (the NCA)[1].

2. The first respondent is Leping Tshuki (first respondent), a debt counsellor who is registered as such with the National Credit Regulator (the NCR) under registration number NCRDC211.
3. The second respondent is the NCR, established in terms of section 12 as a juristic person with extensive functions and powers under the NCA.
4. Neither respondent has opposed this application.

APPLICATION TYPE

5. This is an application in terms of section 141(1)(b), in which the applicant, having received a notice of non-referral from the NCR, seeks leave to refer the matter directly to the Tribunal for adjudication.
6. The Tribunal has jurisdiction to consider this application in terms of section s 141(1)(b) and 27(a).

BACKGROUND

7. According to the applicant, he found out that the first respondent placed him under debt review in 2011 when he applied for a bond with a credit provider. He avers that he never requested to be placed under debt review by anyone. When he approached the first respondent, they wanted R800.00 to remove him from the listing.
8. The applicant referred his complaint to the NCR, who, after having evaluated it, concluded that the matter is time-barred in terms of section 166(1). This section states that a complaint may not be referred to the Tribunal or a consumer court more than three years after the act or omission that is the cause of the complaint or, in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.
9. The relief that the applicant seeks is an order to have him removed from being under debt review.

RELEVANT LEGAL CONSIDERATIONS

10. As already stated, an applicant requires the Tribunal's leave to refer a dispute to it if the NCR has issued a notice of non-referral.
11. Previously, the Tribunal held formal hearings on leave to refer, and all the parties would be present. In *Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd and Others*[2] (Lewis Stores), the court provided helpful guidance to the Tribunal in making decisions regarding leave to refer. It held that a formal hearing on leave to refer was unnecessary, there was no test to be applied, and the decision to consider leave could not be appealed. The court held –

“As I have explained, the NCA provides for an expeditious, informal and cost- effective complaints procedure. Section 141(1)(b) confers on the Tribunal a wide, largely unfettered discretion to permit a direct referral. The NCA does not require a formal application to be made, and it is not necessary for purposes of the present appeal, nor is it desirable, to circumscribe the factors to which the Tribunal

should have regard. There is no test to be applied in deciding whether or not to grant a direct referral to it in respect of a complaint. The purpose of the provision is simply for the Tribunal to consider the complaint afresh, with the benefit of any findings by the Regulator, and to decide whether it deserves its attention. Circumstances which may influence its decision may include the prospects of success, the importance of the issue, the public interest to have a decision on the matter, the allocation of resources, the complainant's interest in the relief sought and the fact that the Regulator did not consider that it merited a hearing before the Tribunal. The list is not intended to be exhaustive."

12. As no test is to be applied in determining whether leave to refer should be granted, the Tribunal will consider the matter in the general context of the facts the applicant placed before it, including the conclusion reached by the NCR and its

reasons.

CONSIDERATION

13. From the outset, it must be noted that the Tribunal is a creature of statute. As such, it derives its powers and authority from the NCA. Unlike our superior courts, it has no inherent jurisdiction and may only grant orders expressly authorised under the NCA.
14. As correctly stated by the NCR in its notice of non-referral, section 166(1) precludes the referral of a complaint to the Tribunal or a consumer court more than three years after the act or omission that is the cause of the complaint, or in the case of a course of conduct or continuous

practice, the date that the conduct or practice ceased. The interpretation of section 166(1) is plain, as was confirmed by the

high court in *First Rand Bank v Ludick*[3], the section "restricts the bringing of action before the Tribunal more than three years after the commission or omission that the consumer complains about." [4]

15. The cause of the applicant's complaint is his actual placement under debt review, which occurred in 2011, which he alleges happened without his consent. This happened more than three years before the referral of his matter to the Tribunal. Therefore, the present referral cannot be entertained in terms of section 166(1).
16. It is noted that among the papers filed by the applicant is a letter from the first respondent dated 20 May 2024, wherein all the applicant's credit providers were notified that the applicant had withdrawn from the debt review process before the issuance of Form 17.2 and that the credit bureaus had been updated accordingly via the NCR's Debt Help System. Under these circumstances, the order requested by the applicant would be academic.

THE ORDER

17. In the result, the following order is made:

17.1. The application for leave to refer a complaint directly to the Tribunal is refused, and

17.2. There is no order made as to costs.

S Hockey (Presiding Tribunal member)

[1] Any reference to a section in this

ruling

will be a reference to a section of the NCA unless otherwise stated.

[2] 2022 (1) SA 377 (SCA) at para 15.

[3] (A277/2019) [2020] ZAGPPHC 821 (18 June 2020).

[4] Ibid, at para 16.

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Prepared on 11 October 2026 · Esheria