

SOUTH AFRICA / JUDGMENT

Ilori v Standard Bank of South Africa Limited (NCT/348735/2024/114(1))

[2025] ZANCT 3 (17 February 2025)

[2025] ZANCT 3

COURT

National Consumer Tribunal

BEFORE

S Hockey, A Potwana, CJ Ntsoane

CASE / FILE NUMBER

NCT/348735/2024/114(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case No: NCT/348735/2024/114(1)

In the matter between: BABATUNDE OLANREWANJU ILORI APPLICANT and STANDARD BANK OF SOUTH AFRICA LIMITED RESPONDENT

Coram:

Mr S Hockey

- Presiding Tribunal member

Dr A Potwana

- Tribunal member

Mr CJ Ntsoane

- Tribunal member

Date of the hearing:

- 13 February 2025

Date of

judgment:

- 17 February 2025

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is Dr Babatunde Olanrewaju Ilori (the applicant), a consumer as defined in section 1 of the National Credit Act, 34 of 2005 (the NCA). At the hearing of this matter, the applicant was represented by Adv Muhammed Karolia from the Johannesburg Bar, instructed by O'Donoghue & Marais Inc.
2. The respondent is Standard Bank of South Africa Limited (the first respondent), a credit provider registered as such with the National Credit Regulator (NCR). At the hearing, the respondent was represented by Mr Shaun Jacobs, an attorney from Stupel & Berman Inc.

TERMINOLOGY

3. A reference to a section in this judgment refers to a section of the NCA.
4. A reference to a regulation refers to the National Credit Regulations, 2006.[1]
5. A reference to a rule in this judgment refers to the Rules of the Tribunal[2] (the rules).

APPLICATION TYPE AND JURISDICTION

6. This is an application under section 114 in which the applicant seeks an order that the respondent provides him with statements pertaining to his prestige plus current account (account number ending with 604) (his prestige account), which is a transactional account with the respondent. The applicant asks for statements of his prestige account from February 2006 until May 2009.[3]
7. Accordingly, the National Consumer Tribunal has jurisdiction under section 114(1) as well as section 27(a)(ii) to consider this application.

BACKGROUND

8. The applicant has a long-running dispute with the respondent regarding a home loan obtained from the latter on 22 June 2006. The applicant also took out a further loan[4] from the respondent and had bonds registered over his fixed property as securities for these loans.
9. The applicant disputes that the full amount of the first home loan, a builders' loan, was paid over to him and that all payments were to be made to his prestige account. He now wants copies of statements of his prestige account dating back to 2006.
10. The applicant relies on a formal request made by his erstwhile attorneys under section 110(1) for statements in respect of both his prestige and home loan accounts dated 25 June 2022.[5] This request was made for statements of these accounts from 1 January 2006 until 31 December 2008.

11. The applicant was provided with statements for his home loan account, but the respondent advised that they could not access statements for his prestige account for the period concerned.

THE RELEVANT LEGAL CONSIDERATIONS AND DISCUSSION

12. In terms of section 110(1)(b), a credit provider must, at the consumer's request, deliver, without charge to the consumer, a statement of any amounts credited or debited during the period specified in the request. In terms of section 110(2)(b) a statement requested in terms of subsection (1) must be delivered within 20 business days if any of the requested information relates to a period of more than one year before the request was made.
13. Section 114(1) provides that if the statement is not offered or delivered within the required time, the Tribunal, on application by the consumer, may order the credit provider to provide the statement concerned.
14. The applicant brought this application to the Tribunal after being told that the respondent could not retrieve the statements for the requested period. The respondent's attorneys relayed this to the applicant on more than one occasion when it was made clear that the respondent could not retrieve statements of his prestige account exceeding ten years.
15. The evidence by the respondent that it is unable to retrieve statements for the requested period is uncontroverted and must, in any event, be accepted in terms of the Plascon-Evans rule[6] to the extent that the applicant may have challenged it.
16. It must be noted that the respondent pointed out that it is under no legal obligation to retain historical statements for longer than 5 years. In this regard, it referred to the following:
 - 16.1. Under clause 6.8.1 of the Code of Banking Practice, banks will provide copies of statements within legal and practical documentation retention frameworks.
 - 16.2. Section 22A, read with section 23(d) of the Financial Intelligence Centre Act 38 of 2001, prescribes that the relevant account information must be kept for five years.
 - 16.3. Regulation 55(2)(b) requires a credit provider to keep records that must be maintained in terms of the NCA readily accessible for three years.
17. It must be noted, however, that the records that a credit provider must maintain under regulation 55 are set out in regulation 55(1)(b) and do not include statements pertaining to accounts.
18. Section 170 requires credit providers to maintain records of all applications for credit, credit agreements and credit accounts in the prescribed manner and for the prescribed time. Regulation 56(a) requires credit providers to keep records that must be maintained under section 170 for three years from the date of termination of the credit agreement.

19. The applicant argued that the respondent was obliged to provide the records pertaining to his prestige account as the account is still open. However, there is an insurmountable problem with an order requiring the statements for the requested period to be provided. The statements are simply unavailable, and an order to this effect would not be implementable.
20. Our courts have often held that court orders must be enforceable. Otherwise, they cannot be valid. In *Eke v Parsons*[7], the Supreme Court of Appeal held that a “court order must bring finality to the dispute, or part of it, to which it applies. The order must be framed in unambiguous terms and must be capable of being enforced”. (underlining provided for emphasis). More recently, it was held in *SecureBT (Pty) Ltd v Norris and Another*[8] that a court order must be framed in unambiguous terms and must be capable of being enforced.

THE ORDER

21. In the result of the above, the Tribunal makes the following order:

21.1. The applicant’s application is dismissed.

21.2. There is no order as to costs.

[signed]

S Hockey

(Presiding Tribunal member)

Tribunal members Dr A Potwana and Mr CJ Ntsoane concur.

- [1] Published under GN R489 in GG28864 of 31 May 2006 as amended.
- [2] Published under GN 789 in GG 30225 on 28 August 2007 as amended by GN 428 in GG 34405 on 29 June 2011, GN R203 in GG 38557 on 13 March 2015, and GN 157 in GG 39663 on 4 February 2016.
- [3] See para 15 of the founding affidavit on page 12 of the record.
- [4] The loans were taken out by the applicant and his ex-wife, and bonds were registered over what appears to be a joint property, but as the ex-wife is not part of these proceedings, the Tribunal will only refer to the applicant.
- [5] Page 253 of the record.
- [6] Regarding this trite rule, when there is a factual dispute in application proceedings between parties, relief should be granted only of the facts stated by the respondent, together with the admitted facts in the applicant’s affidavits that justify the order.
- [7] 2016
- (3) SA 37 at para [73].

[8] (21699/2021)

[2023] ZAGP JHC 1037 (15 September 2023) at para [19].

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