

SOUTH AFRICA / JUDGMENT

Khomola v Mans and Another (NCT/369009/2024/141(1)(b)) [2025] ZANCT 23 (3 April 2025) [2025] ZANCT 23

COURT

National Consumer Tribunal

BEFORE

A Potwana, N Maseti, C Ntsoane

CASE / FILE NUMBER

NCT/369009/2024/141(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

SITUATED IN CENTURION

Case number: NCT/369009/2024/141(1)(b)

In the matter between: FULUFHEDZANI NIXON KHOMOLA APPLICANT and CHANTAL MANS
(NCRDC318) FIRST RESPONDENT NATIONAL CREDIT REGULATOR SECOND RESPONDENT

Coram

Dr A Potwana

- Presiding Tribunal Member

Ms N Maseti

- Tribunal Member

Mr C Ntsoane

- Tribunal Member

Date of consideration (in chambers): 3 April 2025

LEAVE TO REFER RULING AND

REASONS

THE PARTIES

1. The applicant is Fulufhedzani Nixon Khomola, an adult male consumer as defined in section 1 of the National Credit Act 34 of 2005 (NCA).
2. The first respondent is Chantal Mans (NCRDC318), a debt counsellor as defined in section 1 of the NCA.
3. The second respondent is the National Credit Regulator (NCR), a juristic person established by section 12(1) of the NCA.

APPLICATION TYPE AND JURISDICTION

4. This is an application in terms of section 141(1)(b) of the NCA, which provides that if the NCR issues a Notice of Non-Referral in response to a complaint, the complainant may refer the matter directly to the Tribunal, with the leave of the Tribunal.
5. Section 27(a)(i) of the NCA empowers the Tribunal to adjudicate the applicant's application for leave to refer a matter directly to the Tribunal.

INTRODUCTION

6. The applicant's complaint is that he was placed under debt review without his consent. He claims that he could afford to pay his debts and only wanted to see and compare what he would pay to his creditors if was placed under debt review.

FACTS

7. In the prescribed form for seeking leave to refer a complaint to the Tribunal, NCA Form 32, the applicant stated that he applied for debt review but cancelled the application with the first respondent. He claimed that he paid up all his debts. He listed a loan with the Motor Finance Corporation, a division of Nedbank Limited and several loans with the First National Bank, a division of FirstRand Bank Limited. He filed documents confirming that he settled his Woolworths Financial Services (Pty) Ltd and Nedbank Limited accounts. The documents are dated 20 December 2022 and 30 August 2024, respectively.
8. The applicant's founding affidavit is extremely scanty in detail. In it, the applicant claims that he was looking for a quotation and never intended to be placed under review. The documents he signed were for a quotation and not for debt review. No payment was ever made in respect of the debt review.
9. The Tribunal has gleaned from the Notice of Non-Referral issued by the NCR that on 21 September 2021, the first respondent contacted the applicant telephonically and offered debt review services. In an email dated 23 September 2021, the first respondent confirmed receipt of the applicant's signed documents. On 28 September 2021, the applicant enquired whether the first respondent would start the process by October 2021. In an email dated 4 October 2021, the applicant sent an email to the first respondent advising the latter that he had changed his mind as he was able to pay whatever he owed his creditors and asked the first respondent to terminate their contract.

CONSIDERATION OF THE MATTER AS UNOPPOSED

10. The application documents were served on the first respondent by registered mail and on the second respondent by email. Under Rule 13 of the Tribunal Rules,[1] the respondents were entitled to oppose the application by delivering answering affidavits within 15 business days of receiving the application documents. The respondents, however, neglected or failed to do so. Due to the absence of the respondents' answering affidavits, the matter is adjudicated as unopposed. Rule 13(5) of the Tribunal Rules stipulates that any fact or allegation not specifically admitted or denied within an answering affidavit is deemed to have been admitted. Therefore, in the absence of answering affidavits, the respondents are deemed to have admitted the allegations made by the applicant.
11. On 20 March 2025, the Registrar issued a Notice of Set Down for the leave application to be adjudicated in chambers on 3 April 2025 and served it on the parties.

THE LAW APPLICABLE TO THE APPLICATION

12. Section 71(a) of the NCA states:

“A consumer whose debts have been rearranged in terms of Part D of this Chapter, must be issued with a clearance certificate by a debt counsellor within seven days after the consumer has satisfied all the obligations under every credit agreement that was subject to that debt rearrangement order or agreement, in accordance with that order or agreement.”

ASSESSMENT OF THE EVIDENCE

13. Previously, the Tribunal held formal hearings to consider applications for leave to refer with all the parties present. In *Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd and Others*,[2] the court provided a useful guidance to the Tribunal in 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. Writing the

unanimous decision of the Supreme Court of Appeal (SCA), Eksteen AJA stated:

“[15] 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.”

14. The Tribunal will consider the applicant's submissions as no test is to be applied and the respondents have not filed answering affidavits. The applicant has presented contradicting statements to the Tribunal. In NCA Form 32, he claims he applied for debt review but subsequently cancelled it. In his affidavit, he claims that he was looking for a quotation and never intended to be placed under review.
15. Also, although the applicant claims to have paid off all his creditors, he only submitted documentary proof of having settled two loans. If the applicant did, in fact, settle all his credit agreements, his failure to file confirmation of having settled all his credit agreements does not lend credence to his claim. If indeed the applicant has paid off all his creditors, he should have demanded that the first respondent issue a clearance certificate to him as envisaged under section 71(1)(a) of the NCA. There is no evidence before the Tribunal that he did.

CONCLUSION

16. In view of the patent inconsistencies in the applicant's case, the Tribunal finds that the applicant does not enjoy reasonable prospects of success. Granting leave will not result in the efficient and effective utilisation of the Tribunal's resources. Accordingly, the applicant has failed to show that the interests of justice favour that he should be granted leave to refer his complaint to the Tribunal. The provisions of section 71(1)(a) of the NCA empower him to demand a clearance certificate from the first respondent if he can prove that he satisfied all the obligations under every credit agreement that was subject to the debt rearrangement order or agreement, in accordance with that order or agreement.

ORDER

17. The Tribunal makes the following order:

17.1. Leave to refer is refused.

17.2. There is no order as to costs.

Thus, done and dated 3 April 2025.

[signed]

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Dr A Potwana

Presiding Tribunal Member

Tribunal members Ms N Maseti and Mr C Ntsoane concur.

[1] Published under GN 789 in Government Gazette No. 30225 of August 2007 as amended by GN 428 in Government Gazette 34405 of 29 June 2011 (published in terms of the Consumer Protection Act, 68 of 2008), GN R203 in Government Gazette 38577 of 13 March 2005 and GN 39663 of 4 February 2016.

[2] (Case no 314/2020) [2021] ZASCA 91 (25 June 2021) SAFLII.

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