

SOUTH AFRICA / JUDGMENT

Mapeka v Firststrand Bank Limited (Wesbank) (NCT/14020/2014/141(1)) [2014] ZANCT 44 (11 November 2014) [2014] ZANCT 44

COURT

National Consumer Tribunal

BEFORE

LA Best, B Dumisa, J Simpson

CASE / FILE NUMBER

NCT/14020/2014/141(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

Case No: NCT/14020/2014/141(1)

In the matter between:

SELLO STEPHEN MAPEKA.....APPLICANT

and

FIRSTSTRAND BANK LIMITED (WESBANK).....RESPONDENT

Coram:

Ms LA Best - Presiding member

Prof B Dumisa - Member

Adv J Simpson - Member

Date of Hearing – 10 October 2014

JUDGMENT AND

REASONS

APPLICANT

1. The Applicant in this matter is Sello Stephen Mapeka, a male major residing in the Free State Province (hereinafter referred to as “the Applicant”).
2. At the hearing the Applicant appeared in person and did not have a legal representative.

RESPONDENT

3. The Respondent is FirstRand Bank Limited, a limited liability company duly registered in accordance with the company laws of South Africa, conducting business as Wesbank with divisional head-offices in Fairland, Johannesburg (hereinafter referred to as “the Respondent”).
4. At the hearing the Respondent was represented by an advocate of the Johannesburg Bar, Mr Hendrik van Nieuwenhuizen. He appeared on instructions from Roussouw Lesie Attorneys Incorporated.

APPLICATION TYPE

5. This is an application in terms of section 141(1)(b) of the National Credit Act, 34 of 2005 (hereinafter referred to as “the Act”) for leave from the National Consumer Tribunal (hereinafter referred to as “the Tribunal”) to refer the Applicant’s matter directly to the Tribunal. The Applicant is ultimately seeking a finding of prohibited conduct on the part of the Respondent, in order to obtain a certificate in terms of section 164(3) of the Act, which will enable him to proceed to the

High Court to seek an award of damages..

BACKGROUND

6. The background to this matter was extensively summarised in the judgment of Professor Dumisa, dated 30 July 2014, when granting

condonation to the Applicant. The background of the matter, as it appeared in the judgment, is quoted in full below as it sets out all processes undertaken prior to the current application before the Tribunal. The Condonation ruling was as follows:

Condonation Ruling Extract:

“The facts of the case can be summarised as follows:

4.1 The Applicant entered into an instalment agreement with the Respondent for the purchase of a motor vehicle, Hyundai Elantra 1.6 GLS 2007 model, on 13 July 2007.

4.2 Due to a number of personal circumstances, the Applicant later failed to honour his car instalments, under the credit agreement he had with the Respondent.

4.3 On 1 July 2008, when the vehicle’s odometer reading was approximately 23 000 kilometres, the Applicant voluntarily returned the motor vehicle to the Respondent’s premises in Bethlehem “for storage” until his personal problems had been resolved; further indicating that “I am prepared to continue with the instalment as soon as the matter has been resolved”.

4.4 The Respondent sold the vehicle on auction on 25 September 2008 for R87 780 inclusive of VAT.

4.5 The Tribunal concluded that the Respondent sold the car without following the termination and enforcement procedures set out in Part C, Chapter 6, of the National Credit Act, 34 of 2005 (the “Act”).

4.6 The Tribunal accordingly referred the matter of the sale of the vehicle to the National Credit Regulator (the “NCR”) for the latter to investigate whether there was compliance with section 129 and 130 of the Act; whether there was a prohibited conduct on the part of the Respondent; and to revert back to the Tribunal within 3 months with a report on its findings for the Tribunal to make a ruling.

4.7 The NCR submitted its report to the Tribunal during January 2010 in terms of which the Respondent indicated they were willing to write off any amount owing to them by the Applicant and that they would advise the credit bureau to clear any listing of the Applicant in respect of this Respondent’s account.

4.8 The Applicant purportedly accepted the Respondent’s offer by email on the 6th of May 2010; and the Respondent was informed accordingly on 7 May 2010.

The Tribunal confirmed that the NCR had concluded that the Respondent did not act in compliance with the Act when selling the car; but that the NCR had not referred a case of prohibited conduct to the Tribunal; which effectively meant that the Tribunal considered the matter as closed.

The Applicant thereafter approached the NCR for a Notice of Non-Referral, to which, on 18 December 2013, the NCR asserted “that the NCR is not required to refer the matter to the Tribunal and as such no such referral will be made”.

On the 17th of January 2014, the Tribunal finally made a formal ruling which effectively confirmed its earlier position that the Respondent did not act in compliance with the Act in selling the Applicant’s car. The Tribunal, however, decided yet again to send the matter back to the NCR for the latter “to decide whether to refer the matter to the Tribunal for a hearing into possible prohibited conduct or to issue a notice of non-referral to the Applicant, in accordance with the procedures set out in the Act; adding that “Should the National Credit Regulator issue a notice of non-referral, it will be the applicant’s prerogative to decide whether he wishes to pursue the matter any further.”

Subsequent to the Tribunal’s Ruling dated the 17th of January 2014, the NCR decided to issue a notice of non-referral, on the 3rd of March 2014, on the following grounds:

8.1 The conduct complained of, occurred more than three years ago, in 2008. Section 166 prohibits the referral of matters to the NCT after expiry of the three year period.

8.2 The NCR has already taken enforcement action by way of obtaining an undertaking from Wesbank to the effect that:

8.2.1 Wesbank shall in future abide with the termination and enforcement procedures set out in Part C, Chapter 6 of the National Credit Act;

[1] Refer to MV Chauke v Standard Bank et al NCT/4658/2012/141(1)(P) and Coertze and Burger v Young NCT/7142/2012/73(3)&75(1)(b) CPA.

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