

SOUTH AFRICA / JUDGMENT

Melodi v Experian (Pty) Ltd and Another (NCT/346744/2024/141(1)(b))

[2025] ZANCT 9 (30 January 2025)

[2025] ZANCT 9

COURT

National Consumer Tribunal

BEFORE

S Hockey, Z Ntuli, A Potwana

CASE / FILE NUMBER

NCT/346744/2024/141(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/346744/2024/141(1)(b)

In the matter between: ABIAH MARITSE MELODI APPLICANT and EXPERIAN (PTY) LTD FIRST RESPONDENT NATIONAL CREDIT REGULATOR SECOND RESPONDENT

Coram:

Mr S Hockey: Presiding Tribunal member

Ms Z Ntuli: Tribunal member

Dr A Potwana: Tribunal member

Date of hearing: 10 December 2024

Date of judgment: 30 January 2025

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is Abiah Maritse Melodi (the applicant). The applicant is a consumer, as defined in section 1 of the National Credit Act 34 of 2005 (NCA). The applicant represented himself at the hearing.

2. The first respondent is Experian (Pty) Ltd (the first respondent), a company incorporated under the company laws of the Republic of South Africa. It is a registered credit bureau with registration number NCRCB16. The first respondent was not represented at the hearing.
3. The second respondent is the National Credit Regulator (the second respondent), established under section 12 of the NCA to regulate the consumer credit market and ensure compliance. The second respondent was not represented at the hearing.

TERMINOLOGY

4. In this judgment, a reference to a section refers to a section of the NCA. A reference to a regulation refers to the National Credit Act Regulations, 2006 (the regulations).[1] A reference to a form refers to the prescribed forms set out in Schedule 1. A reference to a rule refers to the Rules of the Tribunal.[2] The first and second respondents are jointly referred to as “the respondents”.

APPLICATION TYPE

5. This is an application in terms of section 141(1)(b), in which the applicant, with leave granted by the Tribunal, seeks redress against the first respondent for the alleged failure to update his credit record timeously, accurately, consistently and fairly, and not resolving his concern within the prescribed 20 days. The respondents do not oppose the application.

PROCEEDINGS ON A DEFAULT BASIS

6. The applicant served the notice and application on the respondents as required by the rules on 27 August 2024, with proof of service on pages 63 to 65 of the record. The Tribunal Registrar also dispatched all notices, including the set down and the leave to refer judgment, on the respondents, with proof of service on pages 69, 69A, 73, and 81 of the record. The panel is satisfied that the respondents were served correctly in compliance with the applicable rules.
7. Under rule 13(2), the respondents must serve their answering affidavits on the applicant within 15 business days of receiving the application. The respondents failed to comply with this requirement. The applicant did not pursue a default order under rule 25(2). Consequently, the Tribunal Registrar scheduled the matter for hearing on an unopposed basis, as the pleadings were closed.
8. Under rule 13(5), any factual allegation in the application or referral not expressly denied or admitted in the answering affidavit is deemed admitted. As the respondents did not submit their answering affidavits, the allegations set forth in the applicant's application are regarded as admitted.

BACKGROUND

9. The referral arises from a complaint lodged by the applicant with the NCR on 23 April 2024. The complaint concerned incorrect, inaccurate, and misleading information recorded on his credit report in relation to the following entities: Old Mutual, Finchoice Africa, Letsatsi Finance, Fundi Edu Loan, Capitec Bank Access Facility, and MPOWA Finance. The NCR issued a notice of non-referral on 29 July 2024, stating that the first respondent acted within the scope of the NCA, as regulation 17 prescribes a five-year retention period, irrespective of whether an account is settled or closed.
10. On 27 August 2024, the applicant escalated the matter to the Tribunal, alleging that the first respondent failed to update his credit report in a timely, accurate, consistent, and fair manner. This failure resulted in issuing incorrect, confusing, and misleading credit reports about the applicant. The applicant asserted that the first respondent failed to address his complaint within the prescribed 20-day period. The applicant also claimed that the first respondent failed to comply with section 72(3)(a), which obliges a credit bureau to take reasonable steps to seek evidence supporting challenged information, or section 72(3)(b), which requires the removal of information if no credible evidence can be found.
11. The applicant's founding papers primarily focused on the following accounts: Mpowa Finance (Pty) Ltd: 647[...], Letsatsi Finance: 329[...]³ & 329[...]⁹, Fundi Edu Loan: EDU[...], FinChoice Africa Mobimoney: 957[...], FinChoice: 949[...], and Capitec Bank Access Facility: 200[...]. The applicant noted that four accounts, ABSA Insurance (653[...]), Letsatsi Finance (329[...]¹⁰ & 329[...]³), and FinChoice Africa Mobimoney (800[...]), had been removed from his credit report, despite the five-year retention period referenced by the second respondent. However, no explanation was provided for the retention of other inaccurate accounts.
12. Upon receiving the application for leave to refer, the Tribunal Registrar issued a notice of complete filing dated 29 July 2024 on 19 September 2024. A notice of set down was issued on 29 September 2024, enrolling the matter for 15 October
2024. The respondents failed to submit answering affidavits within the prescribed time, rendering the matter unopposed. Leave was granted on 16 October 2024 in a judgment issued on 18 October 2024.
13. The Tribunal Registrar did not receive opposing papers in this application. Subsequently, a notice of set down was issued on 25 November 2024, enrolling the matter for 10 December 2024 on an unopposed basis. The hearing was conducted virtually via MS Teams.

THE APPLICANT'S

SUBMISSIONS

14. At the hearing, the applicant succinctly outlined the basis of his application as follows:

14.1 The first respondent recorded information on his credit profile incorrectly, inaccurately, and inconsistently, generating a confusing and misleading credit report. Despite lodging a formal complaint on 8 March 2024, the first respondent failed to address these concerns as the NCA mandates. The inaccuracies have adversely affected the applicant's credit profile and credit score.

14.2 Between the referral date and the hearing, the first respondent selectively removed certain accounts without explanation, leaving other inaccurate account records on his credit report. The applicant took the panel through the following account list:

Account Name Account Number Status FinChoice Africa MobiMoney 957[...] Inaccurate and still appears on the report

Account Name Account Number Status FinChoice 949[...] Inaccurate and still appears on the report ABSA Insurance 653[...] Removed Letsatsi Finance 329[...]3 Inaccurate and still appears on the report Letsatsi Finance 329[...]0 Removed Letsatsi Finance 329[...]3 Removed Letsatsi Finance 329[...]9 Inaccurate and still appears on the report MPOWA Finance 647[...] Inaccurate and still appears on the report Old Mutual 933[...] Removed Fundi Edu 102[...] Inaccurate and still appears on the report Capitec Access Facility 200[...] Removed

14.3 The inconsistencies in the reported accounts include discrepancies in the dates of the last payment, last update, and status updates. For instance, the Fundi Edu Loan (taken in 2013 and settled in 2015) is still incorrectly reflected in the 2024 credit report beyond the prescribed five-year retention period. Further, payments made on several accounts, such as Letsatsi and FinChoice, are not accurately reflected, leaving monthly data blank. What

14.4 Certain accounts were incorrectly reflected. For instance, the ABSA account relates to a vehicle insurance policy and should not have been listed on the credit report. The MPOWA accounts are reflected under a single identifier but appear split into six separate accounts with inconsistent dates and statuses.

14.5 The first respondent failed to address the complaint timeously. Further, it failed to provide credible evidence to support the incorrect and inaccurate information, as required under section 72(3)(a), or to remove the information as required under section 72(3)(b), contravening the NCA. Additionally, the second respondent failed to enforce the relevant provisions of the NCA when the matter was escalated to it.

15. The applicant seeks an order for the enforcement of sections 70(2)(c), 70(2)(e), 70(2)(i), 72(1)(c)(ii), 72(3)(a), and 72(3)(b), the immediate removal of the inaccurate and misleading information from his credit report and an appropriate increase in his credit score by reasonable points.

THE LAW

16. Section 70(2)(c) obliges a credit bureau to take reasonable steps to verify the accuracy of any consumer credit information reported to it. Section 70(2)(e) mandates the credit bureau to maintain consumer credit information records in accordance with prescribed standards. Section 70(2)(i) prohibits the credit bureau from knowingly or negligently providing a report containing inaccurate information.
17. According to section 72(1)(c), every consumer has the right to challenge the accuracy of information held by a credit bureau or the national credit register and require the credit bureau or the National Credit Regulator to investigate the accuracy of challenged information without charge to the consumer.
18. Section 72(3) further mandates that, within 20 business days after the challenge is filed, the credit bureau or the National Credit Regulator must take reasonable steps to seek evidence supporting the challenged information and either provide such evidence to the person who filed the challenge or remove the disputed information if no credible evidence is found.

CONSIDERATION OF THE EVIDENCE

19. The NCA provides a practical, efficient, cost-effective procedure for challenging inaccurate credit information under section 72.[3] The applicant correctly exercised his right under section 72(1)(c). The first respondent had a legal obligation to either substantiate the reported information with credible evidence or remove the

disputed credit information from its records. There is no record of any credible evidence provided to the applicant. Instead, the first respondent selectively removed certain portions of the challenged credit information without an explanation to the applicant. The first respondent has no basis to retain the challenged information. The applicant's evidence of the first respondent's failure to comply with section 72(3) is irrefutable.

20. The applicant provided a detailed account of the inaccuracies, with copies of his credit reports dated 5 March 2024 and 5 December

2024. He further demonstrated that the first respondent failed to address the issue in a timely manner as required. Despite the challenge, the first respondent shared the applicant's credit reports despite containing inaccuracies. The first respondent is legally bound to ensure the accuracy of the credit information it holds. The panel is convinced that the first respondent failed to comply with sections 70(2)(c) and 70(2)(i).

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21. Evidence shows that the first respondent contravened the NCA concerning the following accounts: FinChoice Africa MobiMoney (957[...]), FinChoice (949[...]), Letsatsi Finance (329[...])3, Letsatsi Finance (329[...])9, MPOWA Finance (647[...]), and Fundi Edu (102[...]). The first respondent was indifferent to the applicant's concerns. For instance, this is demonstrated by the continued retention of the Fundi Edu (102[...]) account that was paid in 2015 beyond the prescribed retention period. This blatant disregard for the NCA must be

condemned.

22. Inaccurate credit information can undoubtedly result in severe consequences for the consumer's access to credit. No credit bureau should be allowed to retain inaccurate credit information, regardless of the prescribed retention period. The first respondent did not respect the applicant's rights under the NCA. The second respondent is critical to ensuring compliance with the NCA when the credit bureaus fail consumers. Given the regime under section 72, the applicant should not have been compelled to approach the Tribunal.
23. Accordingly, the applicant is entitled to have the inaccurate information removed by the first respondent. However, the applicant's request for an order to adjust his credit score by increasing points is unsubstantiated. In any event, section 72 already provides removal as a remedy for the circumstances of this complaint. As a statutory body, the Tribunal cannot go beyond the scope of its enabling legislation, as reaffirmed in *National Credit Regulator v National Consumer Tribunal & Others*.^[4]

CONCLUSION

24. The panel finds that the first respondent contravened the provisions of the NCA. The applicant is entitled to have the inaccurate credit information immediately removed from his credit report or profile. The second respondent must ensure that the first respondent immediately executes the removal. The panel condemns the respondents' approach in handling this complaint, causing severe inconvenience to the applicant

ORDER

25. Accordingly, the panel makes the following order:

25.1 The first respondent has contravened sections 70(2)(c), 70(2)(i) and 72(3)(a)-(b) and thereby committed prohibited conduct;

25.2 The first respondent is within ten business days of the issuance of this judgment, ordered to remove from its records and files the credit information relating to the following accounts: FinChoice Africa MobiMoney (957[...]), FinChoice (949[...]), Letsatsi Finance (329[...])³, Letsatsi Finance (329[...])⁹, MPOWA Finance (647[...]) and Fundi Edu (102[...]);

25.3 The second respondent must take reasonable steps to ensure that the first respondent complies with the order in paragraph 25.2; and

25.4 There is no order as to costs.

[Signed] Ms Z Ntuli

Tribunal member

Presiding Tribunal member Mr S Hockey and Tribunal member Dr A Potwana concur.

^[1] Published under Government Notice R489 in Government Gazette 28864 of 31 May 2006.

[2] GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters

before the National Consumer Tribunal, 2007 (Government Gazette No. 30225).

[3] TransUnion Credit Bureau v Nyoka (CA272/2015) [2016] ZAECGHC 81 (14 June 2016) at Par 19.

[4] (707/2022)

[2023] ZASCA 133; [2024] 1 All SA 67 (SCA) (17 October 2023).

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