
SOUTH AFRICA / JUDGMENT

Moeketsi v Isaacs (NCT/194299/2021/141(1) NCA) [2021] ZANCT 56 (28 November 2021) [2021] ZANCT 56

COURT

National Consumer Tribunal

BEFORE

L Best, A Potwana, J Simpson

CASE / FILE NUMBER

NCT/194299/2021/141(1) NCA

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CHAMBERS

Case number: NCT/194299/2021/141(1) NCA

In the matter between:

ELIZABETH MOEKETSI

APPLICANT

And

WASHEEMAH ISAACS

RESPONDENT

Coram

Dr L Best

- Presiding Tribunal Member

Mr A Potwana - Tribunal Member

Adv J Simpson - Tribunal Member

Date of consideration (in chambers) - 17 November 2021

Date of Judgment

- 28 November 2021

LEAVE TO REFER JUDGMENT AND REASONS

THE PARTIES

1. The Applicant in this matter is Elizabeth Moeketsi, an adult female residing in Glenharvie (“the Applicant”).
2. The Respondent is Washeemah Isaacs, a registered debt counsellor with registration number NCRDC 2693 (“the Respondent”).

APPLICATION TYPE

3. This is an application in terms of Section 141(1) of the National Credit Act, Act 34 of 2005 (“the NCA”). A section in this judgment refers to a section in the NCA.
4. Section 141(1) states the following –

“Referral to Tribunal.—(1) If the National Credit Regulator issues a notice of non- referral in response to a complaint other than a complaint concerning section 61 or an offence in terms of this Act, the complainant concerned may refer the matter directly to—

 - (a) the consumer court of the province within which the complainant resides, or in which the respondent has its principal place of business in the Republic, subject to the provincial legislation governing the operation of that consumer court; or
 - (b) the Tribunal, with the leave of the Tribunal.”
5. Therefore, before the Tribunal can hear the matter, it must first consider whether leave should be granted.

BACKGROUND

6. In January 2020 the Applicant received an unsolicited telephone call from a representative of the Respondent, who asked the Applicant if she would wish information regarding her credit status. The Applicant provided her ID number as requested by the Respondent’s representative.
7. In June 2020 when the Applicant wished to make a purchase at a retail store by means of a credit card, the transaction was declined. The store informed the Applicant that her credit card was blocked as the Applicant was shown to be under debt review. The Applicant had no knowledge of this as she had at no point applied for or granted permission to be placed under debt review. She wants her status as being under debt review removed and her credit status updated accordingly at credit bureaux.
8. On 23 June 2020 the Applicant lodged a complaint with the National Credit Regulator (“NCR”). The NCR issued a Notice of Non-Referral dated 2 December 2020. The Notice states that the reason for non-referral is that in terms of section 166(2), a complaint may not be referred to the Tribunal where the complaint is against any person who is or has been a

Respondent in proceedings under another section of the NCA relating substantially to the same conduct. The debt counsellor against whom the Applicant lodged a complaint, is such a Respondent under case number NCT/168220/2020/57(1).

9. On 25 June 2021, the Applicant filed her complete application with the Tribunal. She also filed an application to condone the late filing of the application. Condonation for the late filing was granted in a written judgment dated 29 September 2021.
10. The Applicant served the application on the Respondent by registered post on 24 June 2021, a receipt for which was provided by the Applicant.
11. The Respondent has not filed an answering affidavit.
12. The Registrar of the Tribunal issued a Notice of Filing to the parties on 1 October 2021 and a Notice of Set Down was issued on 28 October 2021, by both registered mail and email.

HEARING OF THE MATTER ON A DEFAULT BASIS

13. Rule 13(1) and (2) of the Tribunal Rules state –“
 - (1) Any person required by these Rules to be notified of an application or referral to the Tribunal may oppose the application or referral by serving an answering affidavit on:
 - (a) the Applicant; and
 - (b) every other person on whom the application was served.
 - (2) An answering affidavit to an application or referral other than an application for interim relief must be served on the parties and filed with the Registrar within 15 business days of the date of the application.”
14. Rule 13(5) of the Rules of the Tribunal states that “Any fact or allegation in the application or referral not specifically denied or admitted in an answering affidavit will be deemed to have been admitted.”
15. Rule 25(3) states-

“The Tribunal may make a default order –

 - (a) after it has considered or heard any necessary evidence; and
 - (b) if it is satisfied that the application documents were adequately served.”
16. Rule 30(1) states –

“A document may be served on a party by-

 - (a) delivering it to the party; or
 - (b) sending it by registered mail to the party’s last known address.”

17. Notwithstanding the service of the application documents on the Respondent, no answering affidavit was filed as provided for under rule 13(1) and (2) of the Tribunal Rules. The Tribunal panel was satisfied that the application documents and the Notice of Set Down were adequately served on the Respondent. The consideration of the application proceeded on a default basis.

APPLICATION FOR LEAVE

18. In terms of section 141(1), the Applicant may only refer the matter directly to the Tribunal with leave of the Tribunal.
19. Previously, the Tribunal held a formal hearing on leave to refer with all the parties present. In the matter of Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd and Others (Case no 314/2020) [2021] ZASCA 91 (25 June 2021) SAFLII, the court provided 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. The court held –

“[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.”

20. As there is no test to be applied, the Tribunal will consider the matter in the general context of the circumstances as submitted by the Applicant.
21. Firstly, it must be noted that the Applicant made very general allegations against the Respondent without providing any detail or context whatsoever. The Applicant’s affidavit provides no detail about any attempts that she may have made to contact the Respondent to ascertain whether it was the Respondent who placed her under debt review. The only reference to any interaction with the Respondent is in the Applicant’s complaint to the NCR, where she states that she made contact with the debt counsellor – read to mean the Respondent – to complete the complaint form. There is no indication of the Respondent’s response when the Applicant made this contact. It must be noted that a complaint form to the NCR is not attested to under oath.

22. The Applicant references sections and provisions of the NCA which were contravened, as well as non-compliance with certain of the General Conditions of the Respondent's conditions of registration. It appears that this information was gleaned by the Applicant from the information in the non-referral notice from the NCR. The Applicant does not take this any further and there is no evidence submitted by the Applicant in support thereof.
23. The evidence before the Tribunal does not disclose any indication of prohibited conduct on the part of the Respondent. Judgment has now been made in the matter NCT/168220/2020/57(1), which had not been concluded at the time that the NCR issued the Notice of Non-referral. Prohibited conduct by the Respondent was found, however the Tribunal

Order does not include relief to consumers who may have been adversely affected by the Respondent's conduct.

24. It appears that the Applicant's primary concern is that she is still listed as being under debt review with the credit bureaux. In this regard, the Applicant did not follow the correct process in pursuing the complaint.
25. The NCA prescribes a specific process that must be followed to challenge information held by a credit bureau. In terms of section 72(1)(c)(ii) and (d) of the NCA, the Applicant is entitled to challenge the accuracy of any information concerning her that is held by any credit bureau and require the relevant credit bureaux to investigate the accuracy of any challenged information without charge to her. In terms of section 72(3) of the NCA, the relevant credit bureau must provide evidence of the challenged information to her or remove the information and all record of it from its files if it is

unable to provide credible evidence in support of the information.

26. If a credit bureau refuses to remove any incorrect information, the Applicant may lodge a complaint with the NCR for investigation. In terms of section 72(5) of the NCA, a credit bureau may not report any challenged information until the challenge has been resolved. The NCR can then further investigate at that point.

CONCLUSION

27. At this stage, there is no evidence of prohibited conduct by the Respondent that the Tribunal needs to consider.
28. The Applicant did not follow the process set out in section 72 of the NCA to challenge the information held by the credit bureau.
29. The Tribunal finds that the Applicant has not provided any basis for leave to refer to be granted.

30. The Applicant is at liberty to follow section 72 of the NCA to challenge the disputed information. She can further approach the Credit Ombud, which deals with any disputes regarding credit listings.

ORDER

31. Accordingly, the Tribunal makes the following order –

31.1 The Applicant's application for leave to refer the matter directly to the Tribunal is refused; and

31.2 There is no order as to costs.

THUS DONE IN GQEBERHA ON THIS 28TH DAY OF NOVEMBER 2021

[signed]

Dr L Best

Presiding Tribunal Member

Mr A Potwana (Tribunal Member) and Adv J Simpson (Tribunal Member) concurring

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANCT/2021/56.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/moeketsi-v-isaacs-unknown-topic-anct-2021>

Prepared on 24 October 2026 · Esheria