

SOUTH AFRICA / JUDGMENT

Monakedi v Old Mutual Finance and Another (NCT/29037/2015/149(1)) [2015] ZANCT 40 (15 December 2015) [2015] ZANCT 40

COURT

National Consumer Tribunal

BEFORE

T Woker, B Dumisa, H Devraj

CASE / FILE NUMBER

NCT/29037/2015/149(1)

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

number: NCT/29037/2015/149(1)
In

the matter between: LOUIS
MONAKEDI
APPLICANT
and
OLD
MUTUAL
FINANCE
1st
RESPONDENT
THE
NATIONAL CREDIT
REGULATOR
2ND
RESPONDENT

Coram: Prof
T Woker –
Presiding
member
Prof
B Dumisa –
Member
Ms
H Devraj
–
Member
Date

of Hearing: 03 December 2015

JUDGMENT

AND REASONS

APPLICANT

1. The Applicant is Mr Louis L Monakedi, hereinafter referred to as (“the Applicant”). The Applicant represented himself at the hearing.

RESPONDENT

1. The 1st Respondent is Old Mutual Finance, hereinafter referred to as (“The Respondent”). The Respondent is a credit provider registered with the Regulator under registration number NCRCP35.
2. The 2nd Respondent in this matter is the National Credit Regulator (“the NCR” or “the Applicant”), a juristic person established in terms of Section 12 of the National Credit Act, 2005 (“the Act”).
3. Both Respondents were present at the hearing. The 1st Respondent was represented by R Lewies of Lewis Attorneys and the 2nd Respondent was represented by J Selolo.

APPLICATION TYPE

4. The Applicant brought this application in terms of section 149(1) of the National Credit Act, Act 34 of 2005 (“the Act” or “the NCA”) to the National Consumer Tribunal (“the Tribunal” or “the NCT”) for interim relief.

AT THE HEARING

Application for postponement

5. The 1st Respondent applied for a postponement on 02 December 2015, to provide it with an opportunity to file its answering affidavit.

6. The Tribunal raised that issue with the parties that this was an urgent interim relief application brought before the Tribunal.
7. The 1st Respondent then stated that they would forego the condonation application and that the matter could proceed.

The Applicant's submissions

8. The Applicant alleges that Old Mutual Finance granted him a loan to consolidate his debt and that this loan was granted recklessly.
9. The Applicant alleges that he filed a complaint with the National Credit Regulator against the 1st Respondent with regard to the credit rating that the 1st Respondent has placed at the Credit Bureau.
10. The Applicant alleges that he filed a complaint with the National Credit Regulator and followed-up with the NCR regarding the status of the investigation and that the NCR had indicated that the investigation has not yet been concluded.
11. The interim order sought by the Applicant is for the adverse rating on the Old Mutual account to be removed from the credit bureau.
12. In response to the Tribunal's enquiry from the Applicant in terms of the harm or serious, irreparable damage that the Applicant would suffer in this matter, the Applicant indicated that the adverse credit rating is affecting his career aspirations and that he is unable to purchase a home or a vehicle.

The 2nd Respondent

13. It is noted that the 2nd Respondent also did not oppose the application. The 2nd Respondent submitted that the Applicant had indeed filed a complaint and that the matter was still being investigated. The 2nd Respondent has also been confirmed a non-referral has not been issued in this matter.

CONSIDERATION OF THE MATTER ON A DEFAULT BASIS

16. Rule 13(5) provides as follows:

"Any fact or allegation in the application or referral not specifically denied or admitted in the answering affidavit, will be deemed to have been admitted"

17. Rule 25(2)(3) provides as follows:

"(3) 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".

18. Neither the 1st Respondent, nor the 2nd Respondent had filed answering affidavits. Therefore, the 1st Respondent had applied for a postponement as they had not received the main application and only became aware of this matter, when the notice of set down as e-mailed to them. As the 1st Respondent had agreed to forego the postponement application, the Tribunal proceeded to hear the Applicant on the main matter.

CONSIDERATION OF THE APPLICABLE LAW AND THE TRIBUNAL'S FINDINGS

19. Section 149(1) of the NCA allows for interim relief applications by complainants. It provides that –

“At any time, whether or not a hearing has commenced into a complaint, a complainant may apply to the Tribunal for an interim order in respect of that complaint, and the Tribunal may grant such an order if-

- (a) there is evidence that the allegations may be true; and
 - (b) an interim order is reasonably necessary to-
 - (i) prevent serious, irreparable damage to that person; or
 - (ii) prevent the purposes of this Act from being frustrated;
 - (c) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and
 - (d) the balance of convenience favours the granting of the order.”
20. Interim relief, as envisaged in Section 149(1) of the NCA, is urgent relief and premised on relief to an Applicant facing imminent

prejudice or harm. The Applicant has further not put forward any evidence that he faces imminent prejudice or harm for relief to be granted to him in terms of this section.

ORDER

21. The Tribunal accordingly makes the following order:

21.1 The relief sought by the Applicant is refused.

21.2 No order is made as to costs

DATED ON THIS 15th DAY OF DECEMBER 2015

[signed]

Ms H Devraj

Member

Prof T Woker (Presiding Member) and Prof B Dumisa (Member) concurring.

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