

SOUTH AFRICA / JUDGMENT

Mudwa v Standard Bank of South Africa Limited (NCT/74947/2017/141(1)(b))

[2017] ZANCT 95 (1 August 2017)

[2017] ZANCT 95

COURT

National Consumer Tribunal

BEFORE

TA Woker, F Manamela, F Sibanda

CASE / FILE NUMBER

NCT/74947/2017/141(1)(b)

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IN THE NATIONAL
CONSUMER TRIBUNAL
HELD IN
CENTURION

Case

Number: NCT/74947/2017/141(1)(b)

In

the matter between:

KHUMALO
MUDWA
APPLICANT
and
THE STANDARD
BANK OF SOUTH AFRICA LIMITED
RESPONDENT

Coram:

Prof
TA Woker
–
Presiding
Member
Adv
F Manamela
–
Tribunal Member
Mr
F Sibanda
–
Tribunal

Member

Date

of hearing

–

26 July 2017

RULING AND

REASONS

APPLICANT

1.

The

Applicant

is Khumalo Mudwa, an adult male.

2.

At

the hearing of 27 July 2017, the Applicant did not attend the hearing and nor was he represented.

RESPONDENT

3.

The

Respondent is The Standard Bank of South Africa Limited, a company duly registered in terms of the Company Laws of the Republic of South

Africa and a registered credit provider with the National Credit Regulator (NCR).

4.

At

the hearing of 26 July 2017, the Respondent was represented by Mr Daniel Raath.

APPLICATION

TYPE

5.

This

was an application for leave to refer a matter to the National Consumer Tribunal (Tribunal) in terms of 141 (1) (b) of the National

Credit Act, 2005 following the issuing of a notice of non-referral by the NCR in terms of section 139 (1) of the Act.

6.

In

other words, the NCR has investigated the matter and has decided that it will not refer the matter to the Tribunal.

7.

In

terms of section 141 (1) (b) a complainant who has received a notice of non-referral may himself refer the matter to the Tribunal.

However, he

may only refer the matter to the Tribunal if the Tribunal grants leave to refer.

BACKGROUND

8.

The

Applicant lodged a complaint with the NCR on 27 September 2016.

9.

According

to the notice of non-referral issued by the NCR under the heading ‘

Short description of the complaint’ the

consumer’s

complaint is as follows:

9.1

the

Applicant alleged that he never received any money from the

Respondent and therefore he does not owe any money to the Respondent

in respect of certain bank accounts.

9.2

The

Respondent proceeded with legal action and an emoluments attachment

order was obtained;

9.3

The

Applicant never received a section 129 notice;

9.4

The

Respondent sold the property and there was a shortfall amount that was paid up;

9.5

During

2010, the complainant lodged a claim for insurance on the mortgage loan account;

9.6

The

Respondent advised that the policy had lapsed and the Applicant could not understand this because he had never missed any payments.

10.

The

NCR referred the complaint to the Respondent. The Respondent

advised that a home loan had been granted to the Applicant

in 2007.

The agreement authorised that the funds be paid to a developer in terms of a building contract.

11.

In

other words, the funds were not paid to the Applicant but rather to the developer, which is in accordance with normal practice.

12.

The

Applicant defaulted on his home loan repayments. This default resulted in the Respondent foreclosing and selling the property.

13.

The

NCR issued the notice of non-referral because it was satisfied that the Applicant had defaulted on his repayments and that the Respondent

had the right to proceed with legal action against the Applicant.

ANALYSIS

OF THE APPLICATION

14.

It

appears from the documents submitted by the Applicant that he is complaining inter alia about certain judgments which were taken against him in the High Court. He is calling on Judge Claassen to account for his judgment and ruling in Case Number 1887/2011 dated 16

August 2011 and Judge Louw to account for his judgment and ruling on Case Number 63771/2012 dated 14 December 2012.[1]

15.

Although

it is not that clear from the documents submitted by the Applicant, it appears that it was as a result of these judgments that the

Applicant's house was sold and transferred to certain third parties. In addition it also appears that further legal action

was taken against the Applicant which resulted in other moveable property being attached by the Acting Sheriff of the High Court.

DISMISSAL

OF APPLICATION

16.

As

stated above, there was no appearance by the Applicant or any representative on the date of the hearing, 26 July 2017. File records show that the Applicant was issued with a notice of set down.

The notice informed him that the matter would be heard at 10am or as

soon as the matter could be heard thereafter and that if he did not appear at the hearing the matter could be dismissed by the Tribunal.

17.

With

regard to the non-appearance of parties at a hearing, Rule 24(1) of the Rules of the Tribunal provides that if an applicant fails to attend or be represented at any hearing or any proceedings, the

presiding member may dismiss the matter by issuing a written ruling.

18.

Rule

24 (2) requires the Presiding Member to be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule (1).

19.

The Presiding member of the Tribunal was satisfied at the hearing, that the parties were properly notified of the date, time and venue

for the proceedings.

20.

The application was formally dismissed by the Tribunal at 12 pm on 26

July 2017 for the following reasons:

20.1

The

Applicant failed to appear at the hearing at 10am as required in the notice of set down;

20.2

The

Tribunal only has jurisdiction to deal with conduct which is prohibited under the Act. In the documents submitted to the Tribunal, the Applicant has not indicated any prohibited conduct on the part of the Respondent;

20.3

The

Applicant's complaint appears to relate to certain judgments issued by the High Court. The Tribunal does not have jurisdiction to set aside decisions of the High Court;

20.4

The

Applicant's complaint relates to matters which appear to have arisen on or before 2012, hence the matter has prescribed. Section 166 (1) of the Act provides that a complainant in terms of this Act may not be referred or made to the Tribunal more than three years after the Act or omission that is the cause of the complaint.

RULING

21. Accordingly, the Tribunal hereby confirms that this application lodged in terms of section 141(1) (b) of the Act is dismissed in terms of Rule 24(1) of the Rules of the Tribunal.

This handed down at Centurion on this 1 August 2017.

[signed]

Prof T Woker

Presiding Member

Adv F Manamela (Tribunal Member) and Mr F Sibanda (Tribunal Member) concurring.

[1] See page 33 of the record

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