

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Chetty (NCT/264621/2023/137(1)(d)) [2023] ZANCT 37 (27 June 2023) [2023] ZANCT 37

COURT

National Consumer Tribunal

BEFORE

CJ Ntsoane, M Peenze, P Manzi

CASE / FILE NUMBER

NCT/264621/2023/137(1)(d)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case Number: NCT/264621/2023/137(1)(d)

In the matter between:

NATIONAL CREDIT REGULATOR APPLICANT

and

PRESLEY CHETTY RESPONDENT

Coram: Mr CJ Ntsoane

- Presiding

Tribunal member

Dr M Peenze

- Tribunal

member

Ms P Manzi

- Tribunal

member

Date of consideration (in chambers) - 07 June 2023

Date of Judgment

- 27 June 2023

LEAVE TO REFER - JUDGMENT AND REASONS

THE PARTIES

1. The Applicant is the National Credit Regulator (the applicant), a juristic person established in terms of section 12 of the National Credit Act, 2005 (NCA) and with offices situated at 127 15th Road, Randjespark, Midrand, Gauteng.
2. The Respondent is Presley Chetty, an adult male formerly registered with the applicant as a debt counsellor in terms of Chapter 3 of the NCA with registration number NCRDC1947 (the respondent). He formerly conducted business as such under the name and style "Chetty and Associates" with a last known address at 54 Denis Hurley Street, 3rd Floor Suite 318, Durban, KwaZulu-Natal.

TERMINOLOGY

3. A reference to a section in this judgment refers to a section of the NCA.
4. A reference to a rule refers to the Rules of the National Consumer Tribunal (the rules).

TYPE OF APPLICATION AND JURISDICTION

5. The applicant seeks leave to bring a complaint directly to the National Consumer Tribunal (the Tribunal). The application is made in terms of section 137(1)(d).
6. In terms of section 27(a)(i) the Tribunal has jurisdiction to consider this application.[1]

INTRODUCTION

7. On 03 April 2022, Mr Kripa Sheal Dudree (the complainant) lodged a complaint with the applicant by submitting a completed Form 29. The complainant detailed his complaint in which he made allegations to the effect that since he applied for debt review and a court order was granted on 9 June 2016, he had made regular payments to the respondent towards his creditors monthly.
8. The court order states that the complainant originally had 16 creditors that needed to be paid. The claimant came into some funds and decided to settle nine of the original 16 creditors that appeared in the court order.
9. According to the complainant, the respondent only settled eight of the nine creditors, and not as agreed with the complainant. He left out the ABSA credit card account.

10. The complainant alleges that he approached the respondent to enquire about the non-settlement of the ABSA credit card number 4[....]7 (the credit card account). The respondent informed the complainant that the credit card account was settled. However, the complainant discovered that the respondent had misled him because the credit card account was not settled. Efforts to contact the respondent to resolve the impasse were in vain because the respondent would not respond to the complainant. The complainant then referred a complaint to the applicant, who investigated it.
11. The complainant was under court-ordered debt review, with the respondent as his debt counsellor. On 25 March 2020, the complainant transferred R208,000.00 into the respondent's bank account.
12. The said amount was meant to settle the 9 outstanding creditors. However, the respondent only settled eight creditors. The credit card account with a balance of R30,905.35 was not settled. According to the applicant's preliminary investigations, a considerable amount of the R208,000.00 was misappropriated.
13. The applicant submits that it has good prospects of succeeding with this application for the orders sought in the application. The documentation submitted with the application confirms the respondent's non-compliance with the NCA and his conditions of registration.
14. This application is of substantial importance to the complainant as the complainant has been diligent in his attempts to resolve his over-indebtedness. He entrusted the respondent with a substantial amount of money intended for settling his credit obligations to achieve his goal of being debt-free. The respondent's conduct has caused the complainant to be further and not less indebted. The respondent has contravened the purpose of the NCA and his statutory obligations of protecting consumers from over-indebtedness.

RELIEF SOUGHT

15. The applicant seeks leave to bring a complaint against the respondent directly before the Tribunal and, in the event of such leave being granted, for an order on the same papers, in the following terms:

"Declaring the conduct of the respondent to be prohibited in terms of the NCA in that the respondent acted inconsistently with:

- a. Section 52(5)(c) read with Regulation 11 of the NCA and read further with condition B1 of his specific conditions of registration as a debt counsellor in that he received payments from a consumer in respect of debt obligations that were re-arranged in terms of the NCA and irregularly distributed such payments to credit providers, and/or
- b. Section 52(5)(c) read with general conditions 1 and 2 of his conditions of registration as a debt counsellor in that he failed to comply with legislation and regulations applicable to the operation of the business of a debt counsellor and failed to perform debt counselling in a manner that is consistent with the purpose and requirements of the NCA and failed to act

professionally and reasonably in providing debt counselling services to the consumer and failed to provide such services in a manner that was timely, fair and non-discriminatory and does not bring the NCR or debt counselling into dispute.

- c. Any other appropriate order required to give effect to a right, as contemplated in the NCA.”

LEAVE TO REFER APPLICATIONS

16. Section 141(1)(b) allows the applicant to refer a matter directly to the Tribunal only with leave of the Tribunal.
17. In *Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd and Others*, the court held that no formal hearing on leave to refer was necessary, no test to be applied, and the decision to consider leave could not be appealed, stating as follows:

“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.”

18. As there is no test to be applied, the Tribunal will consider the matter in the general context of the circumstances submitted by the applicant.

CONSIDERATION

19. The respondent did not oppose this application. The applicant’s allegations fall within the parameters of the NCA. They concern the respondent’s failure to comply with his obligations appearing in the NCA and his conditions of registration as a debt counsellor.
20. Consequently, the tribunal believes that leave to refer the main application for a Tribunal hearing should be granted.

ORDER

21. Accordingly, for the reasons set out above, the Tribunal makes the following order:

21.1. The application for leave to refer is granted; and

21.2. No order is made as to costs.

{SIGNED} Mr CJ Ntsoane

Presiding Tribunal Member

Tribunal Members Dr M Peenze and Ms P Manzi concur.

- [1] Section 27(a)(i) of the NCA provides that “The Tribunal or a member of the Tribunal acting alone in accordance with this Act or the Consumer Protection Act, 2008 may adjudicate in relation to any application that may be made to it in terms of this Act in respect of such an application.”
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