

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Dinga Finance CC (NCT/122560/2018/140(1)) [2019] ZANCT 91 (28 March 2019) [2019] ZANCT 91

COURT

National Consumer Tribunal

BEFORE

B Dumisa, N Maseti, M Nkomo

CASE / FILE NUMBER

NCT/122560/2018/140(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case Number: NCT/122560/2018/140(1)

In the matter between:

NATIONAL CREDIT REGULATOR APPLICANT

and

DINGA FINANCE CC RESPONDENT

Coram:

Prof B Dumisa -Presiding Tribunal Member

Ms NMaseti - Tribunal Member

Ms MNkomo - Tribunal Member

Date of Hearing: 28 March 2019

POSTPONEMENT ORDER

1. The Applicant is the NATIONAL CREDIT REGULATOR, a juristic person established by Section 12 of the National Credit Act, Act 34 of 2005 ("the Act"). The Applicant has its head offices at 127 Fifteenth Road, Randjespark, Midrand, in the Gauteng Province.

2. The Respondent is DINGA FINANCE CC (Company Registration Number 1999/009440/23). The Respondent is not a registered credit provider; though it was previously registered with the Applicant, with Registration Number NCRCP 2860 which lapsed in the year 2012. The Respondent operates from the 31d Floor of the United Building, Field Street, Durban, in the Province of KwaZulu- Natal.

SET DOWN AS ANUNOPPOSED MATTER

3. This matter was set down for a hearing as an unopposed matter.
4. The Respondent had not filed any answering affidavit.
5. The Respondent had not indicated, in any other way, that it had any intentions of opposing this matter.
6. On the date of the hearing, on 28 March 2019, the Respondent's consultant, Mr Israel Sibiya, attended the hearing and expressed an intention to request a postponement of this matter, on grounds that they had not been properly served with the necessary documents pertaining to this matter.
7. The Respondent's representative alleged that the Respondent was completely ignorant of the Tribunal processes; and mistook the

Tribunal correspondence to relate to the ongoing correspondence between the Respondent and the Applicant with regards to the Respondent's efforts to be re-registered as a credit provider by the Applicant.

8. The Respondent even alleged that it tried calling the Tribunal, without any success. The Respondent did not provide any proof to back up these allegations.
9. The Respondent could not explain why it did not use emails when allegedly trying to solicit more information from the Tribunal and/ or the Applicant with regards to this matter.

APPLICANT'S OPPOSITION TO THE RESPONDENT'S ATTENDANCE AT THE HEARING

10. The Applicant, through its representative Ms Leanne Schwartz, opposed the admission of the Respondent to participate on this matter, on grounds that this was officially an unopposed matter, as the Respondent had not filed any answering affidavit nor made any submissions that he intended defending the matter.
11. The Applicant, made submissions that proved that the Respondent had been specifically asked to agree to that emails be used as mode of service:

11.1 An email showing the Respondent's agreement to this effect was shown to the Tribunal by the Applicant; and

11.2 The Respondent's representative also showed emails that proved that the Respondent did receive emails from both the Applicant and the Tribunal, despite alleging that they did not receive the necessary Applicant's Application documents from either the Applicant or the Tribunal.

12 The Applicant's official position was that the Respondent was simply trying to delay this commencement of this hearing against it at the Tribunal.

13 The Applicant made submissions that that would be serious prejudice to the consumers if the Respondent was allowed to participate at this hearing, without having adhered to the proper processes, as set out in the Rules.

14 The Applicant alerted the Tribunal that the Respondent was actually actively illegally operating as a credit provider, without being registered as such by the Applicant. The Respondent had been previously registered as a credit provider with the Applicant; but had allowed its registration to lapse in 2012, hence the Respondent has illegally operated as a credit provider for over seven years.

15 The Respondent was accused of serious breaches of the National Credit Act, Act 34 Of 2005 (the Act), especially breaching Sections

129 and 130 of the Act, in that he inappropriately obtained Emolument Attachment Orders ("EAO" or garnishee orders).

POINTS IN FAVOUR OF GRANTING A POSTPONEMENT ORDER

16 It is always in the interests of justice for both sides on any dispute to be heard, especially where there is a high possibility of very serious negative consequences (sanctions) for one of the parties, hence the relevance of the audi alteram pattern rule, which means "hear the other side".

17 Hearing this matter on a default basis could have expedited the hearing of this matter; BUT, it would actually have been grossly

unfair, though perfectly legal, if this matter was to be finally concluded without the respondent having been afforded another

opportunity to state his side of the story. The fact that the respondent could have been the architect of his own demise by not

having adhered to the processes to be followed as prescribed by the Rules, would not have erased the lingering question whether the outcome could have been different if the Respondent had been given the opportunity to make its own submissions on all the serious

allegations being made against it by the Applicant.

18 The Respondent's representative indicated an intention to negotiate a possible settlement with the Applicant.

19 Both parties committed themselves to resolving all the outstanding issues and /or documents and be ready for a full hearing on merits as early as the 11th of April 2019.

20 It was agreed that should the parties reach any settlement agreement on certain aspects, the said agreement should be submitted to the NCT Registrar by not later than the 11th of April 2019, together with the list of any issues not resolved.

21 In addition, if no settlement agreement is reached, the Respondent should file a condonation application for the late submission of its answering affidavit itself by the 11th of April 2019.

22 Should the settlement agreement nor the Respondent's condonation application NOT BE RECEIVED BY THE 11th of April 2019, the NCT Registrar will re-set the matter down for a hearing on an unopposed basis.

ORDER

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

16.1 The postponement order is reluctantly granted with conditions;

16.2 The conditions for the granting of the postponement order are;

16.2.1 The Respondent is ordered to ensure that, on its own, it obtains at its earliest possible convenience, and not later than the 11th of April 2019, all the necessary documents pertaining to this case that the Applicant and the Tribunal allege were properly sent to the Respondent;

16.2.2 The Respondent not be found breaching any of the provisions of the Act during the duration of this postponement; this effectively means the Respondent should not illegally operate as a credit provider pending the finalization of this matter

16.2.3 The Respondent must immediately lodge a condonation application for late filing of an answering affidavit not later than the 11th of April 2019; and

16.2.4 The Respondent must also concurrently pre-emptively lodge an answering affidavit, in line with the applicable Rules, not later than the 11th of April 2019.

DATED ON THIS 30th day of March 2019

Prof Bonke Dumisa

Presiding Member

Ms N Maseti, Member, and Ms M Nkomo, Member, concurring

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