

SOUTH AFRICA / JUDGMENT

National Credit Regulator v F en H Cronje Finansiele Dienste (NCT/183247/2021/57(1)) [2025] ZANCT 16 (16 April 2025)

[2025] ZANCT 16

COURT

National Consumer Tribunal

BEFORE

MC Peenze, A Potwana, N Maseti

CASE / FILE NUMBER

NCT/183247/2021/57(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case Number: NCT/183247/2021/57(1)

In the matter between: NATIONAL CREDIT REGULATOR APPLICANT and F EN H CRONJE
FINANSIELE DIENSTE RESPONDENT

Coram:

Dr MC Peenze - Presiding Tribunal member

Dr A Potwana – Tribunal member

Ms N Maseti – Tribunal member

Date of hearing – 15 April 2025

Date of order – 16 April 2025

CONSENT ORDER

THE PARTIES

1. The applicant is the National Credit Regulator (the NCR), a state organ and a juristic person established in terms of section 12 of the National Credit Act 34 of 2005 (the NCA) to regulate the consumer credit market and ensure compliance with the NCA. During the hearing, Ms Renate Garlipp, a senior legal advisor employed by the applicant, represented the applicant.

2. The respondent is F en H Cronje Finansiële Dienste CC (the respondent), a close corporation duly registered and incorporated under the company laws of the Republic of South Africa and a registered credit provider with registration number NCRCP4952. During the hearing, Ms Lizelle Squirra from Bosch Marais Attorneys represented the respondent.
3. Collectively, the applicant and the respondent are referred to as “the parties”.

TERMINOLOGY

4. A reference to a section in this order refers to a section of the NCA, and a reference to a regulation refers to the NCA Regulations of 2006 (the regulations).[1]

APPLICATION TYPE

5. This is an application made in terms of section 57(1), in which the NCR seeks the cancellation of the respondent’s registration because the latter repeatedly contravened various sections of the NCA and failed to comply with its conditions of registration. The NCR further seeks additional orders relating to the alleged contraventions of the NCA, including that such contraventions constitute prohibited conduct, interdictory relief against such further conduct, and an administrative penalty.
6. On 14 April 2025, the applicant filed an application in terms of section 138(1)(b), whereby the applicant and the respondent have concluded a settlement agreement, and the applicant seeks to have the agreement and its terms confirmed as a consent order.

BACKGROUND

7. This referral has its origins in a complaint initiated by the applicant in its own name in terms of section 136(2). During October and November 2020, the applicant conducted a compliance monitoring exercise on the respondent's business. The monitoring report, which is dated 16 November 2020, details how the monitoring exercise was carried out and the findings made after carrying out the monitoring exercise. The desktop compliance monitoring report created a reasonable suspicion that the respondent was conducting its business in a manner inconsistent with the NCA, its regulations, and the respondent’s conditions of registration as a credit provider. On 9 February 2021, the applicant conducted an investigation through a virtual meeting and observed several contraventions of the NCA. The investigation concluded that the respondent had repeatedly contravened certain provisions of the NCA by failing to conduct proper affordability assessments on consumers, issuing credit recklessly, and levying credit life insurance premiums in excess of the prescribed allowed maximum.
8. The applicant proceeded to file an application with the Tribunal in terms of section 57(1), seeking various orders against the respondent, including its deregistration as a credit provider. Following the applicant’s application to the Tribunal, the respondent accepted liability, and admitted to contravening the following sections of the NCA:

- i. Section 81 (2)(a)(ii) and (iii) read with Regulation 23A - entering into credit agreements without first taking reasonable steps to assess proposed consumers' existing financial means, prospects and obligations and consumers' debt repayment histories;
 - ii. Section 81 (3) read with Section 80(1)(a) - entering into reckless credit agreements by failing to conduct proper affordability assessments;
 - iii. Section 81 (3) read with Section 80(1)(b)(ii) - entering into reckless credit agreements by concluding credit agreements that would make the consumer over-indebted; and
 - iv. Section 170 read with Regulation 55(1)(b)(vi) - failing to keep proper records which demonstrate that the respondent has taken the steps required of it in terms of Section 81(2).
9. The respondent agreed to refund consumers and voluntarily cancelled its registration. The respondent fully cooperated with the applicant during the investigation and settlement negotiations. Accordingly, the parties concluded a settlement agreement, and the applicant seeks to have the agreement and its terms confirmed as a consent order.

CONSIDERATION

- 10. Section 138(1)(b) must be read with section 150, which empowers the Tribunal to make an appropriate order relating to prohibited or required conduct, and subsection (d) includes confirming a “consent agreement” as an order of the Tribunal.
- 11. When parties enter into a settlement agreement, they contractually commit to fulfilling its terms.[2] When such an agreement is made an order of the Tribunal, the terms become an enforceable order. Section 160 states that a person who contravenes or fails to comply with an order of the Tribunal commits an offence.
- 12. The NCA does not compel the Tribunal to grant a consent order simply because the parties have concluded a settlement agreement. Section 138(1) states that the Tribunal “may” confirm the agreement as a consent order. A starting point is for the Tribunal to satisfy itself that the parties agree that the terms of their settlement agreement be made part of the consent order. [3]
- 13. In *Eke v Parsons*, [4] the Constitutional Court held that a court must not be mechanical in its adoption of the terms of a settlement agreement, nor is it obligated to accept anything agreed to by the parties and make it an order. The order can only be granted if it is “competent and proper”. This means that the agreement must relate to an issue or litigation between the parties, and the terms of the agreement must be capable of being included in the order, both from a legal and practical point of view. The terms of the agreement must also not be at odds with public policy and must hold some practical and legitimate advantage. Therefore, the Tribunal has a wide discretion in this regard, which must be exercised judicially and in line with the purposes of the NCA.

14. In this instance, the Tribunal, having considered the papers filed, is satisfied that the parties agreed that the terms of their settlement agreement be made a consent order. The settlement agreement relates to an issue of the respondent failing to comply with certain provisions of the NCA, and the terms of the agreement can be confirmed as a consent order, both from a legal and practical point of view. Furthermore, the terms of the agreement are not contrary to public policy. They are legitimately advantageous to the parties as it will prevent further litigation between them. Therefore, granting the applicant's request will result in a competent and proper order.

CONCLUSION

15. The Tribunal is persuaded that it is appropriate to grant the order sought and confirm the settlement agreement and its terms as a consent order.

ORDER

16. Accordingly, the Tribunal makes the following order:

16.1 The settlement agreement concluded by the parties on 14 April 2024, which is annexed to this consent order as "Annexure A to NCR v F & H Cronje Finansiële Dienste CC – NCT-183247-2021-57(1)", is confirmed and made an order of the Tribunal in terms of section 138(1)(b); and

16.2 There is no cost order.

[Signed]

Dr MC Peenze

Presiding Tribunal member

Tribunal members Dr A Potwana and Ms N Maseti concur.

[1] Published under Government Notice R489 in Government Gazette 28864 of 31 May 2006.

[2] Van Zyl v Van Zyl (2020/31538) [2022] ZAGPJHC 649 (14 September 2022), at para 14.

[3] Ex parte Le Grange and Another; Le Grange v Le Grange (984/2011) [2013] ZAECGHC 75; [2013] 4 All SA 41 (ECG); 2013 (6) SA 28 (ECG) (1 August 2013), at para 15.

[4] (CCT214/14) [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) (29 September 2015), at para 25 - 26.

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Prepared on 8 October 2026 · Esheria