

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Nonies Legacy (Pty) Ltd t/a Nonies Legacy Cash Loans (NCT-384962-2025-57(1)) [2025] ZANCT 38 (23 June 2025)

[2025] ZANCT 38

COURT

National Consumer Tribunal

BEFORE

MC Peenze, CJ Ntsoane, ZP Ntuli

CASE / FILE NUMBER

NCT-384962-2025-57(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT-384962-2025-57(1)

In the matter between: NATIONAL CREDIT REGULATOR APPLICANT and NONIES LEGACY (PTY)
LTD T/A NONIES LEGACY CASH LOANS RESPONDENT

Coram:

Dr MC Peenze

- Presiding Tribunal

Member

Mr CJ Ntsoane

- Tribunal Member

Ms ZP Ntuli - Tribunal Member

Date of Hearing

- 17 June 2025

Date of Judgment

- 23 June 2025

JUDGMENT AND REASONS

PARTIES

1. The applicant in this matter is the National Credit Regulator (the applicant or the NCR), a juristic person established by section 12 of the National Credit Act, 34 of 2005 (the NCA). The applicant was represented by its legal advisor, Mboniseni Mathivha (Mr Mathivha), at the hearing.
2. The respondent is Nonies Legacy (Pty) Ltd t/a Nonies Legacy Cash Loans (the respondent), a private company incorporated under the company laws of South Africa with registration number 2017/165231/07. The respondent is a registered credit provider with registration number NCRCP 9698. The respondent was neither represented nor present at the hearing.

TERMINOLOGY

3. A reference to a section in this judgment refers to a section in the NCA. A reference to a regulation refers to the National Credit Act Regulations, 2006[1] (the regulations). A reference to a form refers to a form as prescribed in the regulations. A reference to a rule refers to the Rules of the National Consumer Tribunal[2] (the rules).

PROCEEDINGS ON A DEFAULT BASIS

4. The respondent was duly served with the papers by the applicant via registered mail, with the collection/delivery date reflected as 15 May 2025.[3] The Registrar of the National Consumer Tribunal (the Tribunal) issued a notice of complete filing dated 24 March 2025, the notice of set down dated 12 May 2025, the notice of removal dated 27 May 2025 and the notice of set down dated 4 June 2025 to the parties.[4] The panel is satisfied that the respondent was duly served in accordance with the rules.
5. According to rule 13(2), the respondent must serve an answering affidavit on the applicant within 15 business days of receiving the application. The respondent failed to do so. The applicant did not apply for a default order under rule 25(2). Therefore, the registrar correctly set the matter down for a hearing on a default basis, as the pleadings were considered closed.
6. Rule 13(5) states that any factual allegation in the application or referral not explicitly denied or admitted in the answering affidavit is considered admitted. Since the respondent did not submit an answering affidavit, they are deemed to have admitted the allegations presented in the applicant's application.

FACTUAL BACKGROUND

7. The applicant was invited by the National Regulator for Compulsory Specifications (NRCS) to participate in a Rural Engagement operation in KwaZulu-Natal (KZN). During the operation, the applicant received anonymous tip-offs from members of the local community alleging that the respondent was among the credit providers suspected of contravening the NCA.

8. A visit by the applicant's employees to the respondent's premises revealed that the NCR window decal and registration certificate displayed had expired in 2020. The applicant was advised that the respondent was granting short-term credit loans at a fixed interest rate of 30% a month and that such loans were also granted to all beneficiaries of SASSA grants, including beneficiaries of child support grants, notwithstanding that such grants are intended solely for the benefit of third parties and not for lawful use as income to qualify for credit.
9. These developments gave rise to a reasonable suspicion that the respondent was conducting its business in a manner that contravened the provisions of the NCA. As a result, the applicant initiated a formal complaint against the respondent on or about 30 January 2024 in terms of section 136(2). Consequently, on or about 7 February 2024, Riaz Oliphant and Douglas Musandiwa were appointed as inspectors in terms of section 25 to investigate the respondent's business practices. The scope of the investigation included the following:
 - 9.1 whether the respondent was complying with its business registration requirements in terms of displaying window decals and registration certificates at its business premise;
 - 9.2 whether the cost of credit levied on credit agreements was in line with the allowable amounts to be charged in terms of the NCA;
 - 9.3 whether the respondent was conducting proper affordability assessments in terms of section 81(2) read with regulation 23A;
 - 9.4 whether the respondent was complying with section 76(4) and (5) read with regulation 21(7);
 - 9.5 whether the respondent was properly disclosing the cost of credit in line with regulation 23A(15);
 - 9.6 whether pre-agreement statements and quotations were in the prescribed form and provided to consumers; and
 - 9.7 whether credit agreements were in the prescribed form and provided to consumers.
10. During the investigation, the inspectors interviewed Thandiwe Hlangu, identified as the Office Manager of the respondent, who confirmed that the respondent extends short-term credit ranging from R500.00 to R5,000.00 to consumers, repayable within one month together with interest, the respondent did not assess consumers' debt repayment history, the respondent did not furnish consumers with pre-agreement statements and quotations or written credit agreements, and the respondent applied a fixed interest rate of 30% a month uniformly to all credit agreements.

11. As part of the investigation, the inspectors selected ten credit agreements from the respondent's portfolio for assessment. Upon investigation, the inspectors compiled an investigation report, which is annexed to the application as Annexure "FA6", with the sampled credit agreements attached to the investigation report and marked as Annexures "F1" to "F10".
12. Following the findings, the applicant referred the matter to the Tribunal in terms of section 57(1), seeking an order for the immediate cancellation of the respondent's registration, a declaration that the respondent's conduct constitutes prohibited conduct, an interdict restraining the respondent from committing further contraventions and from granting additional credit to consumers, the imposition of an administrative fine, directing the respondent to appoint an auditor and refund affected consumers, and any other appropriate remedial measures for the benefit of affected consumers.
13. The applicant's founding papers were filed on 20 March 2025. The Registrar issued a notice of complete filing dated 24 March 2025, a notice of set down dated 12 May 2025, a notice of removal dated 27 May 2025, and a subsequent notice of set down dated 4 June 2025, all of which were served on the parties. The respondent did not file an answering affidavit to oppose the application. The matter was accordingly enrolled for hearing on 17 June 2025 on an unopposed basis, and the hearing proceeded virtually via the MS Teams platform.

ALLEGED CONTRAVENTIONS OF THE NCA AND THE TRIBUNAL'S FINDINGS

14. According to the applicant, despite not filing its statutory financial returns, the respondent has remained a registered credit provider since 2 September 2017, with all its annual renewal fees up to date. The respondent failed to file an answering affidavit to contest the allegations against it. Consequently, it is deemed to have admitted all the allegations based on rule 13(5).
15. The applicant has proved on a balance of probabilities that the respondent contravened the NCA. These contraventions occurred repeatedly. Based on the investigation report and the applicant's written and oral submissions, the following contraventions are evident:

Failure to conduct affordability assessments

16. Section 81(2) compels the respondent to take reasonable steps to, amongst other things, assess the debt repayment history, existing financial means, prospects, and obligations of consumers, prior to entering into credit agreements with consumers. These requirements are further articulated in regulation 23A, which all credit providers must adhere to.
17. The panel is mindful that the *Truworths Limited and Others v Minister of Trade and Industry and Others*[5] case set aside regulation 23A(4), with the remainder of regulation 23A applicable to all credit agreements. The respondent failed to assess the debt repayment history of consumers with whom it entered

into agreements. Specifically, no single record of a credit bureau report was found in any of the sampled credit agreements in Annexures “F1” to “F10”[6].

18. The panel finds that the respondent contravened section 81(2)(a)(ii) read with regulation 23A(12)(b) and 23A(13).

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19. Section 81(2)(a)(iii) prohibits a credit provider from entering into a credit agreement without first taking reasonable steps to assess a consumer’s financial means, prospects, and obligations. The applicant asserts that bank statements were obtained as a tick box exercise as there is no evidence that they were used in any of the sampled credit agreements. The financial position of these consumers at the time of concluding the credit agreements was not assessed.
20. The panel finds that the respondent contravened section 81(2)(a)(iii) read with regulation 23A(3) and 23A(12)(c).
21. The applicant submitted that it found no evidence that the respondent applied the minimum expense norms as required in any of the sampled credit agreements. The panel finds that the respondent contravened regulation 23A(9) and 23A(10). Additionally, there was no evidence that the respondent calculated the consumer’s discretionary income before concluding any of the sampled credit agreements. The panel finds that the respondent contravened regulations 23A(8) and 23A(12)(a).

Reckless credit

22. Section 80 stipulates that a credit agreement is deemed to be reckless if the credit provider fails to conduct an assessment as required by section 81(2), irrespective of the outcome of the assessment, prior to entering into a credit agreement with a consumer.
23. Section 81(3) stipulates that a credit provider must not enter into a reckless credit agreement with a prospective consumer. With the respondent’s demonstrated failure to conduct affordability assessments, the panel is satisfied that the respondent contravened section 81(3) read together with section 80(1)(a).

Failure to provide consumers with pre-agreement statements and quotations in the prescribed form

24. Section 92(1) prescribes that a credit provider must not enter into a small credit agreement unless the credit provider has given the consumer a pre-agreement statement and quotation in the prescribed form. Regulation 28(1)(b) requires the pre-agreement statement and quotation to be in the format in Form 20. In terms of regulation 23A(15)(a), a credit provider must disclose to the consumer the credit cost multiple and total cost of credit in the pre-agreement statement and quotation.

25. The applicant demonstrated that the respondent only provided consumers with the acknowledgement of debt in all sampled credit agreements, with no evidence of pre-agreement statements or quotations. The panel concludes that the respondent has contravened section 92(1) read together with regulation 28(1)(b) and Form 20.
26. Consequently, the respondent contravened regulation 23A(15)(a) by failing to make the required disclosures given the absence of the pre-agreement statements and quotations.

Failure to provide credit agreements to consumers in a prescribed form

27. Section 93(1) prescribes that a credit provider must deliver to the consumer, without charge, a copy of a document that records their credit agreement, transmitted to the consumer in a paper form or a printable or electronic form. Section 93(2) stipulates that a document that records a small credit agreement must be in the prescribed form. Regulation 30(1) states that a document recording a small credit agreement must contain all the information as reflected in Form 20.2.
28. The applicant convinced the panel that none of the credit agreements sampled were in the prescribed manner. Instead, the respondent only gave consumers acknowledgements of debt. The panel finds that the respondent contravened sections 93(1) and 93(2) read with regulation 30 and Form 20.2.

Overcharging on the interest

29. Section 100(1)(c) stipulates that a credit provider must not charge an amount to, or impose a monetary liability on, the consumer in respect of an interest charge under a credit agreement exceeding the amount that may be charged consistent with the NCA.
30. Section 101(1)(d)(ii) states that interest charged must not exceed the maximum prescribed rate determined in terms of section 105. Regulation 42(1), Table A stipulates the maximum prescribed interest per month on a short-term transaction as 5% interest per month on the first loan and 3% interest per month on subsequent loans within a calendar year.
31. The applicant demonstrated that the respondent charged consumers a fixed 30% interest on the sampled credit agreements, regardless of the number of days. For instance, the consumer in Annexure “F1” was granted a loan of R1,000.00 payable within twenty-one days (the agreement was concluded on 22 February 2023, and the repayment date was 15 March 2023). The interest charged was R300.00, reflecting the interest of 30%. The interest that could be charged at the rate of 5% for this period is R34.91, and equates to an overcharge of R265.09.
32. The applicant submitted that even if the respondent were to argue that the amount charged constitutes the total cost of credit that it is entitled to charge under the NCA, the amount of R300.00 in this credit agreement still exceeds the permissible total cost of credit. On the loan of R1,000.00, the respondent would have been entitled to charge the initiation fee of R150.00, the service fee of R74.00 (R14.00 pro-rated for February and R60.00 for March), and the

interest of R14.37 for February and R28.51 for March, which equates to R42.88. The total costs ought to be R1,266.88, instead of R1,300.00. Again, it shows an overcharge of R33.12.

33. The Tribunal finds that the respondent has contravened section 100(1)(c), read with 101(1)(d), and further read with regulation 42(1).

Failure to display a valid registration certificate and window decal

34. Section 52(5)(c) provides that a registrant must comply with the conditions of registration and the provisions of the NCA. General Condition 5 of the respondent's Conditions of Registration requires the respondent to display a registration certificate and a window decal supplied by the applicant at the entrance of their business premises.
35. The panel finds that the respondent displayed the NCR registration certificate and window decal that had expired in 2020 as per the evidence of the inspectors in contravention of section 52(5)(c) read with General Condition 5 of the respondent's Conditions of Registration.

Failure to submit statistical and annual financial returns

36. Section 52(5)(c) provides that a registrant must comply with the conditions of registration and the provisions of the NCA. Section 52(5)(f) provides that a registrant must file any prescribed reports with the applicant in the prescribed manner and Form.
37. In terms of regulation 62(1)(b) and (c) read with regulations 64 and 66, each credit provider must submit to the NCR, amongst other reports and returns, statistical returns, annual financial and operational returns. General Condition 3 of the respondent's Conditions of Registration requires the respondent to submit reports and returns within the specified periods.
38. The respondent had not filed its financial returns (Form 39) and its annual financial and operational returns (Form 40) with the

applicant. The correspondence submitted as Annexures "FA9" to "FA15"[7] to the investigation report, which includes an email by Mr Mathivha to the respondent on 10 October 2024, showing that the respondent

disregarded the applicant's instructions and reminders to comply.

39. The panel finds that the respondent contravened section 52(5)(c) and (f) read with General Condition 3 of its Conditions of Registration, read further with regulation 62(1)(b) and (c) and further with regulations 64 and 66.

RELIEF SOUGHT

40. The panel has already concluded that the respondent contravened the NCA. The contraventions are serious and occurred repeatedly. None of the sampled credit agreements complied with the NCA. The panel is persuaded that declaring these contraventions as prohibited conduct is warranted.
41. The NCA prohibits reckless lending to promote responsible borrowing, prevent over-indebtedness, and ensure consumers meet their financial obligations. Failing to conduct affordability assessments amounts to reckless lending. Consequently, the panel finds that the credit agreements in Annexures "F1" to "F10" should be declared reckless.
42. Given the egregious contraventions in the sampled credit agreements, the panel agrees that an audit is warranted to compile a list of consumers and determine credit agreements where proper affordability assessments were not done and/or excessive interest was charged for the applicant to consider. However, the audit must be limited to three years preceding the date of issuing this judgment.
43. The applicant also seeks an order to interdict the respondent from engaging in prohibited conduct in the future and from extending

credit to consumers. The interdict applied for appears to be final. The grounds for a final interdict are well established, namely

- (a) a clear right; (b) an injury actually committed or reasonably apprehended, and (c) the lack of an adequate alternative remedy.[8] In law, the respondent may not engage in prohibited conduct, and an interdict is therefore not warranted in this case.
44. The applicant seeks an order to cancel the respondent's registration as a credit provider due to the severity and repeated

nature of the contraventions. The Tribunal may cancel a registrant's registration at the NCR's request if a registrant repeatedly fails to comply with the conditions of their registration or contravenes the NCA.[9] In this context, "repeated contraventions" would mean a contravention that appeared at least twice, or more than that, but does not mean that the same contravention must appear more than once.[10] The applicant's evidence of repeated non-compliance and contraventions is uncontested. Consumers must be protected from such egregious conduct in the future. Accordingly, a cancellation order is warranted.

45. The applicant also seeks an administrative fine against the respondent. Section 151 empowers the Tribunal to impose such a fine for prohibited conduct, with a maximum set at 10% of the respondent's annual turnover or R1,000,000, whichever is higher. The Tribunal is not precluded from ordering the cancellation of registration and imposition of a fine simultaneously in a case. The issue is whether an administrative fine is justified in this case, and if so, what the appropriate amount would be.

46. Administrative fines primarily serve a punitive and deterrent function to prevent perpetrators and others from engaging in similar unlawful conduct. This purpose was explored in *Southern Pipeline Contractors and Another v Competition Commission*,^[11] where the court underscored that fines should not be used solely for deterrence but must also be imposed with consideration of fairness to the offending party, adding that they should not be aimed at destroying a business.
47. In *NCR v Midwicket*,^[12] the Tribunal emphasised that the primary purpose of an administrative fine is to deter offenders from repeating prohibited conduct.

However, when an offender's registration is cancelled, prohibiting it from operating as a credit provider, one of the main

justifications for imposing a fine no longer applies. In such cases, the fine serves a purely punitive function, which is generally

reserved for the most extreme circumstances.

48. Given that 100% of the sampled credit agreements are found to be reckless, the panel concurs with the applicant that an administrative fine is warranted as a punitive measure. The respondent has blatantly disregarded repeated instructions to submit statutory financial reports and returns to the applicant. This also made it impossible for the applicant to calculate its annual turnover to recommend the appropriate fine to the Tribunal.
49. Nonetheless, the absence of financial information does not preclude the Tribunal from imposing a fine where warranted. The Supreme Court of Appeal in *Loan Company (Pty) Ltd v National Credit Regulator and Another*^[13] recently confirmed that an entity cannot seek to benefit from deliberately withholding financial information to make the task of

the Tribunal regarding fines difficult or even impossible. In determining the appropriate administrative fine, section 151(3) lists factors the Tribunal must consider. These factors are discussed below.

The nature, duration, gravity, and extent of the contraventions.

50. The panel has considered that the respondent's contraventions are serious, ongoing, and committed repeatedly, with reckless lending probably being the most egregious contravention under the NCA. The respondent's conduct can lead to over-indebtedness that the NCA seeks to prevent and damage to the credit industry. The respondent had a duty to abide by the NCA and the conditions of its registration, but failed dismally to do so.

Loss or damage suffered as a result of the contraventions.

51. The panel considered evidence showing that consumers were charged excessively for interest. Further, failure to conduct proper affordability assessments may result in or exacerbate over-indebtedness. Despite the applicant not providing the calculation of actual loss or damage, as no audit was done, such exploitation of consumers should not be condoned.

The behaviour of the respondent.

52. As a registrant, the respondent should know its statutory obligations. The applicant demonstrated that the respondent failed to produce evidence of key requirements, including financial assessments, application of minimum expense norms, calculation of discretionary income, and the correct form of credit agreements, deliberately disregarding the NCA.

The market circumstances in which the contravention took place.

53. The panel considered the context submitted by the applicant that these contraventions occurred in circumstances where consumers are uneducated about their rights relating to access to credit and are in a continuous debt spiral, which makes them vulnerable. These factors make consumers prone to exploitation by unscrupulous credit providers.

The level of profit derived from the contraventions.

54. The applicant did not provide figures to show the respondent's profit but asserted that any credit recklessly extended was a gain to the respondent. Further, it said the respondent undoubtedly profited from the excessive interest charges. Despite the absence of financial information, the panel noted the respondent's submission during the investigation that its loan book is at around R200,000.00 per month.

The degree to which the respondent has co-operated with the applicant.

55. The evidence before the panel shows that the respondent fully co-operated with the investigation. However, the panel notes the respondent's failure to submit statutory financial reports and returns despite instructions and reminders from the applicant.

Prior contraventions by the respondents.

56. The panel established that the respondent has no prior contraventions.
57. The panel has considered all these factors and determines that an administrative fine of R100,000.00 is appropriate.

ORDER

58. Accordingly, the panel makes the following order:

58.1 It is declared that the respondent contravened the following provisions:

58.1.1 Section 81(2)(a)(ii) read with regulations 23A(12)(b) and 23A(13);

58.1.2 Section 81(2)(a)(iii) read with regulations 23A(3) and 23A(12)(c);

58.1.3 Regulations 23A(9) and 23A(10);

58.1.4 Regulations 23A(8) and 23A(12)(a);

58.1.5 Section 81(3) read with section 80(1)(a)

58.1.6 Section 92(1) read with regulation 28(1) and Form 20;

58.1.7 Regulation 23A(15)(a) and (d);

58.1.8 Sections 93(1) and 93(2) read with regulation 30 and Form 20.2;

58.1.9 Section 100(1)(c) read with section 101(1)(d) read further with regulation 42(1);

58.1.10 Section 52(5)(c) read with General Condition 5 of its Conditions of Registration as a credit provider; and

58.1.11 Section 52(5)(c), and (f), read with General Condition 3, Conditions of Registration, read further with regulation 62(1)(b) and

(c) and further with regulations 64 and 66.

58.2 The contraventions listed above are declared prohibited conduct;

58.3 The registration of the respondent as a credit provider is cancelled with immediate effect;

58.4 The respondent has, by its conduct, brought the consumer credit industry into disrepute and acted with a disregard for consumer rights generally;

58.5 The sampled credit agreements marked as Annexures "F1" to "F10" to the investigation report are declared reckless;

58.6 The respondent is directed to:

58.6.1 at its own cost, within 30 calendar days of the date of issue of this judgment, to appoint an independent auditor, registered as a Chartered Accountant, to conduct an audit and submit a report to the applicant within 120 calendar days of the auditor's appointment:

58.6.1.1 for the appointed auditor to determine and compile a list of all the consumers with whom the respondent concluded credit agreements within three years preceding the date of issue of this judgment without proper affordability assessments, and for such list to be referred to the applicant for consideration;

58.6.1.2 for the appointed auditor to determine in the three years preceding the date of this judgment, the credit agreements where consumers were overcharged for interest; and

58.6.1.3 for the respondent to reimburse the excess interest the respondent charged to the relevant consumers under the credit agreements;

58.7 The respondent shall pay an administrative fine of R100,000.00 within 30 calendar days of the issuing of this judgment into the bank account of the National Revenue Fund, the details of which are as follows:

Bank:

Nedbank

Account Holder: Department of Trade, Industry and Competition

Account type: Current Account

Branch Name: Telcoms and Fiscal

Branch code: 198765

Account number: 126 884 7941

Reference: NCT/384962/2025/57(1); and

58.8 There is no order as to costs.

[signed]

Ms Z Ntuli Tribunal member

Presiding member Dr MC Peenze and Tribunal member Mr CJ Ntsoane concur.

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

[2] GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters

before the National Consumer Tribunal, 2007 (Government Gazette No. 30225).

[3] See pages 154 to 158 of the record and an email from Mr Mathivha dated 17 June 2025 for proof of service.

[4] See pages 163 to 165, 171 to 173, 179 and 185 of the record for proof of service.

[5] 2018

(3) SA 558 (WCC).

[6] See pages 91 to 140 of the record.

[7] See pages 144 to 153 of the record.

[8] See *Setlego v Setlego* 1914 AD 221.

[9] Section 57(1)(a) and (c).

- [10] National Credit Regulator v Van Zyl (NCT/3868/2012/57(1)(P)) [2013] ZANCT 14 (14 June 2013), paragraphs 7.13 to 7.14.
- [11] (105/CAC/Dec10, 106/CAC/Dec10) [2011] ZACAC 6; [2011] 2 CPLR 239 (CAC) (1 August 2011), paragraph 9.
- [12] NCT/7962/2013/57(1), paragraph 34.
- [13] (1104/2023)
- [2025] ZASCA 40 (9 April 2025), paragraph 61.

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