

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Prestige Cash Loans (Pty) Ltd (NCT/257509/2023/57(1))

[2025] ZANCT 20 (15 April 2025)

[2025] ZANCT 20

COURT

National Consumer Tribunal

BEFORE

A Potwana, M Peenze, N Maseti

CASE / FILE NUMBER

NCT/257509/2023/57(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

LOCATED IN CENTURION

Case Number: NCT/257509/2023/57(1)

In the matter between: NATIONAL CREDIT REGULATOR APPLICANT and PRESTIGE CASH
LOANS (PTY) LTD RESPONDENT

Coram:

Dr A Potwana

- Presiding Tribunal member

Dr M Peenze

- Tribunal member

Ms N Maseti

- Tribunal member

CONSENT ORDER RULING

THE APPLICANT

1. The applicant is the National Credit Regulator, a juristic person established under section 12 of the National Credit Act, 2005 (the NCA), with its physical address at 127 15th Road, Randjespark, Midrand, Johannesburg, Gauteng (the applicant). During the hearing, Mr Majoro, a junior legal advisor in the applicant's employment, represented the applicant.

THE RESPONDENT

2. The respondent is Prestige Cash Loans (Pty) Ltd, a private company and registered credit provider (the respondent). Advocate Milazi represented the respondent during the hearing.

APPLICATION TYPE AND JURISDICTION

3. The applicant has filed a settlement agreement it entered into with the respondent in terms of section 138(1) of the NCA.
4. The provisions of section 27(a) of the NCA empower the Tribunal to adjudicate this application.

BACKGROUND

5. On 26 January 2023, the applicant filed an application against the respondent in terms of section 57(1) of the NCA with the Tribunal's Registrar (the Registrar). The applicant's case is that the respondent has been registered with the applicant since 2 June 2016 and has several branches. The investigation was conducted at Promenade Shopping Centre, Mbombela, which is not a registered branch. The applicant's investigation into the respondent's business activities followed a virtual scouting exercise conducted in April 2022. One of the entities identified was Ubuntu Cash Loans (Ubuntu).
6. An employee of the applicant, Ms Bongiwe Tyutu (Tyutu), made an anonymous telephone call to Ubuntu. A representative of Ubuntu advised Tyutu that Ubuntu charged 32% interest on its loans. The applicant's Registration Department, however, could not locate any records of Ubuntu. This created a reasonable suspicion that Ubuntu was committing prohibited conduct. On 27 May 2022, the applicant initiated a complaint in terms of section 136(2) of the NCA and authorised an investigation into the activities of Ubuntu in terms of section 139(1) (c) of the NCA.
7. The applicant appointed Tyulu and Tshilidzi Mugwagwa (Mugwagwa) as the inspectors and issued them with certificates. On 3 June 2022, the inspectors conducted an on-site investigation at the respondent's premises. The respondent's supervisor confirmed that the registered entity is the respondent. The inspectors asked for copies of 10 credit agreements for assessment. Following the conclusion of the investigation, Tyulu compiled an investigation report annexed to the applicant's founding affidavit.
8. Based on Tyulu's investigation report, the applicant alleged that the respondent contravened the following provisions of the NCA:
 - 8.1. Section 52(5)(c) of the NCA read with General Condition 2 of its General Conditions of Registration;
 - 8.2. Section 52(5)(c) of the NCA read with General Condition 7 of its General Conditions of Registration;

- 8.3. Section 100(1)(c) read with section 101(1)(d)(ii) and Regulation 40 and 42 of the NCA;
- 8.4. Regulation 23A(15) of the NCA;
- 8.5. Section 100(1)(d)(i) read with Regulation 42(1)(b) of the NCA;
- 8.6. Section 100(1)(b) and (c) read with section 101(1)(b), (c) and (d) read further with Regulations 42, 43 and 44 of the NCA;
- 8.7. Section 92(1) read with Regulation 28 and Form 20 of the NCA;
- 8.8. Section 93(2) read with Regulation 30 and Form 20.2 of the NCA;
- 8.9. Section 90(1) and section 90(2)(b)(iii) read with section 101(1)(c), (f), and (g) of the NCA;
- 8.10. Section 81(2)(a)(ii) read with Regulation 23A(8), 23A(12)(b) and 23A(13);
- 8.11. Section 81(2)(a)(iii) read with Regulation 23A(3), 23A(8), 23A(12)(a) and 23A(12)(c);
- 8.12. Regulation 23A(9) and (10) of the NCA;
- 8.13. Alternatively, section 52(5)(e) read with section 170 and Regulation 55(1)(b)(vi) of the NCA;
- 8.14. Section 81(3) read with section 80(1)(a) of the NCA; and
- 8.15. Section 81(3) read with section 80(1)(b)(ii) of the NCA.
9. The applicant sought an order in the following terms:
 - 9.1. Declaring that the respondent repeatedly contravened the above-cited provisions of the NCA;
 - 9.2. Declaring the respondent's contravention of the relevant sections of the NCA to be prohibited conduct in terms of section 150(a) of the NCA;
 - 9.3. Cancelling the respondent's Registration as a Credit Provider in terms of section 57 of the NCA;
 - 9.4. Alternatively to the above, an immediate order that the investigated branch be closed;
 - 9.5. An interdict restraining the respondent from engaging in similar prohibited conduct;
 - 9.6. Declaring the agreements annexed to the Investigation Report marked as annexures "D1" to "D10" as reckless and setting aside the consumer's rights and obligations under such agreements. Alternatively, suspending the force and effect of such agreements as contemplated in section 83(2) of the NCA;
 - 9.7. If the agreements identified in Annexures D1 to D10 have been paid in full, the respondent must refund the cost of credit to the consumers;

- 9.8. If enforcement action has commenced against the consumers identified in annexures D1 to D10, the respondent must rescind any judgements obtained against these consumers for all credit agreements entered into without conducting proper affordability assessments and clear all negative listings of judgements obtained with credit bureaus;
- 9.9. The respondent must refund overcharged interest to consumers in Annexures D2 and D10;
- 9.10. Within 30 days of the judgment being rendered, appoint an independent auditor, at its own cost, to identify all loans entered without proper affordability assessments conducted in the past five (5) years at the Ubuntu branch. All such credit agreements are to be referred to the applicant for a subsequent referral to the Tribunal;
- 9.11. The Independent Auditor must determine and compile a list of all consumers who were overcharged on interest that exceeded the prescribed maximum amounts and the amounts they were overcharged with;
- 9.12. Once the auditor has compiled the list, the respondent will refund the amounts within thirty (30) days from the date of the Auditor's report and provide proof to the applicant;
- 9.13. Closure or a move from the premises does not absolve the respondent from conducting the audit;
- 9.14. The above-mentioned audit must be conducted within 120 days from the appointment date;
- 9.15. The auditor's report, together with the respondent's own report, must be submitted to the applicant detailing the identity of the consumers, the identified credit agreements, the overcharges and refunds made within 10 days of the completion of the audit. The credit agreements upon which the findings were made must be attached to the report;
- 9.16. A copy of the audit report must be presented to the Tribunal within ten (10) days of the audit's completion;
- 9.17. Following receipt of the audit report and supporting credit agreements, the applicant, in accordance with the NCA, will, upon an appropriate assessment and consideration, apply to the Tribunal for an order declaring such identified credit agreements as reckless in terms of section 80(1)(a) of the NCA and for further appropriate redress to the identified consumers;
- 9.18. The imposition of an administrative fine in the sum of R1000 000.00 as contemplated in section 150(c);
- 9.19. Any other appropriate order is required to give effect to consumers' rights as contemplated in section 150 (i) of the NCA; and
- 9.20. Further or alternative relief.
10. The respondent did not oppose the application.

APPLICATION FOR A CONSENT ORDER

11. On the day of the hearing, 15 April 2025, the applicant filed an application for a consent order in terms of section 138 of the NCA and a copy of a signed settlement agreement. The “Notice of Application to the National Consumer Tribunal for a Consent Order in terms of Section 138 of the National Credit Act, 2005” and the settlement agreement were signed by the applicant’s Manager:

Investigations and Enforcement Department, Tebogo Ntsimane. Adv Milazi signed the settlement agreement on behalf of the respondent. Both signatories confirmed that they were duly authorised to sign the settlement agreement on behalf of their principals.

THE LAW

12. Section 138 (1)(b) of the NCA states-

“If a matter has been investigated by the National Credit Regulator, and the National Credit Regulator and the respondent agree to the appropriate terms of an appropriate order, the Tribunal or a court, without hearing any evidence, may confirm that resolution or agreement as a consent order.”

ANALYSIS OF THE EVIDENCE

13. Among others, in the settlement agreement, the parties agree as follows:

13.1. The respondent acknowledges that it committed prohibited conduct in relation to the agreements it concluded with consumers and to the extent determined to be unlawful in the applicant’s papers;

13.2. The respondent confirms that it contravened the following sections of the NCA:

13.2.1. Section 52(5)(c) read with General Condition 2 of its Conditions of Registration;

13.2.2. Section 52(5)(c) read with General Condition 7 of its Conditions of Registration;

13.2.3. Section 100(1)(c) read with section 101(1)(d)(ii) and Regulation 40 and 42 of the NCA;

13.2.3.1. Regulation 23A(15) of the NCA;

13.2.3.2. Section 100(1)(d)(i) read with Regulation 42(1)(b) of the NCA;

13.2.3.3. Section 100(1)(b) and (c) read with section 101(1)(b), (c) and (d) read further with Regulations 42, 43 and 44 of the NCA;

13.2.3.4. Section 92(1) read with Regulation 28 and Form 20 of the NCA;

13.2.3.5. Section 93(2) read with Regulation 30 and Form 20.2 of the NCA;

13.2.3.6. Section 90(1) and section 90(2)(b)(iii) read with section 101(1)(c), (f), and (g) of the NCA;

13.2.3.7. Section 81(2)(a)(ii) read with Regulation 23A(8), 23A(12)(b) and 23A(13);

13.2.3.8. Regulation 23A(9) and (10) of the NCA;

13.2.3.9. Section 81(3) read with section 80(1)(a) of the NCA; and

13.2.3.10. Section 81(3) read with section 80(1)(b)(ii) of the NCA;

13.3. The respondent admits that its conduct constitutes prohibited conduct in terms of section 150(a) of the NCA;

13.4. The respondent confirms that it will refrain from conducting itself in a similar manner in the future and will cease such business practices;

13.5. The respondent agrees to be interdicted from engaging in similar prohibited conduct in future;

13.6. The applicant abandons its prayer for the cancellation of the respondent's registration;

13.7. The respondent agrees to immediate closure of the unregistered branch;

13.8. The respondent agrees to appoint an independent auditor to conduct an audit as set out in the applicant's founding affidavit; and

13.9. The respondent agrees to pay, in instalments, an administrative fine of R38 068.50 (Thirty-Eight Thousand and sixty-eight rands and fifty cents) to the National Revenue Fund within six months of the signature of the settlement agreement.

CONCLUSION

14. In *Eke v Parsons*,^[1] Madlanga J wrote, "The effect of a settlement order is to change the status of the rights and obligations between the parties. Save for litigation that may be consequent upon the nature of the particular order, the order brings finality to the lis between the parties; the lis becomes *res judicata* (literally, "a matter judged"). It changes the terms of a settlement agreement to an enforceable court order." In the present matter, the application for a consent order is competent. It brings finality to the matter the applicant referred to the Tribunal. Accordingly, the settlement agreement entered by the parties may be confirmed as a consent order in terms of section 138 of the NCA.

ORDER

15. The Tribunal orders that:

15.1. The settlement agreement between the applicant and the respondent annexed hereto and marked "Annex A to National Credit Regulator v Prestige Cash Loans (Pty) Ltd (Registration Number: 2015/ 179463/07), NCT/257509/2023/57(1) Settlement Agreement" is hereby confirmed as an order of the Tribunal.

15.2. No order is made as to costs.

Thus, done and dated on 15 April 2025.

(signed)

Dr Andisa Potwana Presiding Tribunal Member

Tribunal members Dr M Peenze and Ms N Maseti concur.

[1] [2015] ZACC 30 at para 31.

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