

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Quattro Pawn (Pty) Ltd (NCT/128390/2019/140(1))

[2019] ZANCT 152 (15 September 2019)

[2019] ZANCT 152

COURT

National Consumer Tribunal

BEFORE

T Woker, B Dumisa, L Best

CASE / FILE NUMBER

NCT/128390/2019/140(1)

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

number: NCT/128390/2019/140(1)

In

the matter between:

NATIONAL
CREDIT
REGULATOR APPLICANT
and
QUATTRO
PAWN (Pty)
Ltd RESPONDENT

Coram:

Prof
T Woker –
Presiding Tribunal
member
Prof
B Dumisa –
Tribunal
member
Dr
L Best
–
Tribunal
Member

Date
of Hearing -
17 September 2019
Date
of judgment -
29 September 2019

JUDGMENT

AND REASONS

APPLICANT

1. The Applicant in this matter is the National Credit Regulator, a juristic person established in terms of section 12 of the National Credit Act, 34 of 2005 (“the NCA”), (hereinafter referred to as “the Applicant” or “the NCR”).
2. At the hearing, the NCR was represented by its employee, Mr R Stocker.

RESPONDENT

3. The Respondent is Quattro Pawn (Pty) Ltd, a private company registered according to the company laws of South Africa with company registration number 2017/400001/07 (hereinafter referred to as “Quattro” or the “Respondent”).
4. The Respondent’s physical address is Pegasus 1 Building Menlyn Maine, 210 Amarand Avenue, Waterkloof Glen, Extension 2, Pretoria.
5. The Respondent is not a registered credit provider with the NCR.
6. There was no representative for the Respondent at the hearing.

APPLICATION TYPE

7. This is an application in terms of Section 140(1)(c) of the National Credit Act 34 of 2005 (“the NCA”). The Applicant contends that a series of transactions which the Respondent entered into with consumers and which form the basis of its business model were credit agreements in the form of secured loans.
8. The Applicant submits that these consumer transactions were simulated transactions and that instead of constituting sale and lease agreements, as contended by the Respondent, they were in essence credit agreements. Hence the NCA applied to these agreements and the Respondent should have been a registered credit provider with the NCR and should have complied with the provisions of the NCA.

ISSUES

TO BE DECIDED

9. The Tribunal is required to decide whether or not the contracts entered into by the Respondent and consumers were simulated transactions; and therefore that the Respondent was; in fact advancing loans to consumers as a credit provider.
10. The Tribunal is further required to decide whether; as a result; the Respondent contravened the sections of the Act as argued by the NCR, and in-so-doing engaged in prohibited conduct.

BACKGROUND

11. In July and August 2018,[1] the NCR received a number of complaints from consumers who alleged that they had applied for loans from the Respondent. When taking out these loans, the consumers entered into various agreements with the Respondent which entailed inter alia handing over the registration papers of their paid-off vehicles and then paying the Respondent a monthly “rent” in order to retain possession of their vehicles.
12. When these consumers were unable to repay their loans, their vehicles were repossessed by the Respondent and sold to satisfy the

outstanding debts. It transpired then that the consumers had purportedly “sold” their motor vehicles to the Respondent.

13. On 15 and 18 October 2018 respectively, the Applicant appointed Tshepo Mahobye and Douglas Musandiwa in terms of Section 25 of the

NCA as inspectors for the purpose of carrying out an investigation into the Respondent’s business activities.

14. On 22 October 2018, the two inspectors met with and interviewed Mr Le Warne, the CEO of the Respondent. They examined a random

sample of seven files.

15. In addition, Mr Le Warne also explained the Respondent’s business model to the inspectors. In summary, Mr Le Warne explained as follows:

- The Respondent buys, leases and sells cars; it is not a credit provider;
- However, sometimes consumers who do not meet the eligibility requirements for standard loan funding approach the Respondent seeking loans;
- In such cases, the Respondent will ask the consumers whether they have paid-off motor vehicles because such vehicles can then be sold to the Respondent and then rented back by the consumers with the option of re-purchasing the vehicles when their loans are paid off;

- The Respondent purchases the vehicles from such consumers with the purchase price being the amount which the consumers are seeking to borrow. The Respondent then leases the vehicles back to the consumers because it does not want to keep them. Consumers have the option to re-purchase the vehicles after a period of one month or they can extend the lease agreement past the initial one month period; and
- If consumers fail to honour the lease payments, the Respondent repossesses the vehicles and sells them. No court process is followed when these repossessions are carried out.

16. The investigation thus established that the Respondent did not conduct any affordability assessments. Instead, consumers purported

to “sell” their vehicles to the Respondent which were then registered in Quattro’s name. Consumers continued to use their vehicles while purporting to “rent” them from the Respondent. Once consumers had repaid their loans to the Respondent the vehicles could then be registered back into the consumers’ names. When consumers were unable to repay these loans, the Respondent simply repossessed the vehicles without legal process and sold them.

17. Having considered the inspectors’ investigation report; the NCR concluded that the contracts were simulated or sham transactions and that in fact, the Respondent was advancing loans to consumers who would then use their paid-up motor vehicles as security for these loans.[2]

18. The NCR submits that as the agreements entered into by the Respondent were in fact secured credit transactions. Consequently; the Respondent is required to be registered as a credit provider with the NCR; and is required to comply with all the requirements of the NCA.

19. The NCR submitted that the Respondent contravened the following sections of the NCA and Regulations–

- Sections 40(1), 40(3) and 89(2)(d), on grounds that the Respondent has been operating as a credit provider, whilst not registered with the Applicant as a credit provider;
- Section 81(2)a(ii)and (iii), on grounds that the Respondent did not take reasonable steps to assess the consumer’s creditworthiness;
- Section 81(3) read with Section 80(1)(a), on grounds that the Respondent engaged in reckless lending;
- Section 92(2) of the Act and Regulation 29, on grounds that Respondent did not adhere to the formal pre-agreement disclosure procedures required by the Act before granting credit to the consumers;
- Section 93(3) of the NCA and Regulation 31, on grounds that the Respondent did not keep proper records in the prescribed form;

- Section 101(1)(d) read together with Regulation 42(1), on grounds that the Respondent charged excessive interest rates, not in line with the maximum prescribed interest rates as per Regulation 42(1);
- Section 101(1) on grounds that the Respondent charged fees other than those allowed for under the Act; and
- Sections 123, 129, 130, 131 and 127, on grounds that the Respondent engaged in prohibited conduct in the manner in which it terminated agreements with consumers; on how it repossessed motor vehicles from consumers; not following the proper procedures before repossessing cars from the consumers; and not following the proper Court procedures in its debt enforcement procedures.

THE HEARING

20. The matter was set down for hearing on 18 June 2019 on a default basis as the Respondent did not file an answering affidavit. On the day of the hearing, the Respondent's attorneys informed the Tribunal that the Respondent had been placed under provisional (voluntary) liquidation and that the Respondent would not be opposing the matter. The matter was postponed to enable the NCR to obtain further information regarding the liquidation.
21. The matter was again set down for hearing on 17 September 2019. There was no appearance by any representative on behalf of the Respondent.
22. Rule 24 of the Rules[3] provides as follows:

“Non appearance —(1) If a party to a matter fails to attend or be represented at any hearing or any proceedings, and that party—

 - (a) is the applicant, the presiding member may dismiss the matter by issuing a written ruling; or
 - (b) is not the applicant, the presiding member may—
 - (i) continue with the proceedings in the absence of that party; or
 - (ii) adjourn the hearing to a later date.

(2) The Presiding member must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule (1).

(3) The Registrar must send a copy of the ruling to the parties.”
23. The Presiding member was satisfied that the Respondent had been properly notified of the date of the hearing by email. Further, the

Respondent has not filed an answering affidavit and has indicated that it does not intend defending the proceedings.

24. The hearing therefore, proceeded in the absence of the Respondent, in accordance with Rule 24(1)(b)(i).

JURISDICTION

25. The Tribunal considered whether the provisional (voluntary) liquidation had any bearing on the jurisdiction of the Tribunal to adjudicate the matter.
26. Based on the information available, the Respondent voluntarily applied for liquidation on 31 May 2019 on the basis that it is insolvent. The application before the Tribunal was filed on 18 March 2019 before the Respondent applied for liquidation. The provisional liquidation order was granted on 13 June 2019 but a liquidator has yet to be appointed.
27. The Applicant made submissions in this regard. There is urgency to this matter because consumers have lost their motor vehicles and

it is not clear what is happening to those motor vehicles. The longer the matter remains unresolved the more potential there is for consumers to be prejudiced and they may be unable to ever recover those motor vehicles.

28. It is important to note that a company retains its juristic status and identity despite an order of liquidation being granted.[4]
29. Whilst section 359 of the Companies Act of 1973 provides that all civil proceedings by or against a company must be suspended until the appointment of a liquidator;[5] these are not civil proceedings. The proceedings are sui generis in nature and the Tribunal is not a civil court.[6]
30. The Applicant is not claiming anything for itself from the Respondent as it is merely performing its' function as the Regulator. It has initiated the case against the Respondent at the Tribunal by virtue of its statutory functions under the NCA. The Applicant is asking the Tribunal to exercise its statutory powers over the Respondent as well as to impose certain orders on the

Respondent in order to protect the interests of consumers.

31. The status of the Respondent has not changed in any way. It remains a juristic entity and the Tribunal remains empowered to adjudicate on the application brought by the NCR.

CONSIDERATION OF THE EVIDENCE

32. The facts of the matter are relatively straightforward and were confirmed by Mr Le Warne when the inspectors carried out their inspection.
33. In summary, the Respondent extended funds to consumers who then purportedly sold their paid-off motor vehicles to the Respondent,

which motor vehicles could be re-purchased once consumers had repaid the Respondent.

34. The question that arises is whether the transactions were genuine sale agreements as the Respondent purports them to be or secured credit transactions as alleged by the Applicant.
35. If the transactions were in fact secured credit transactions then the Respondent should have been registered as a credit provider with the NCR and it should have complied with the requirements of the NCA. Failure to do so constitutes prohibited conduct under the NCA.
36. The Applicant alleges that the agreements were simulated contracts. A simulated contract is a disguised contract. People usually disguise their contracts in order to get some kind of advantage;^[7] in this instance, the advantage would be to avoid the requirements of the NCA.
37. When the courts are called upon to decide any rights under an agreement they will decide those rights based on the true nature of the agreement and not on the basis of the title that has been assigned to the agreement.^[8]
38. In order to decide whether or not transactions are simulated, it is necessary to examine the transactions as a whole, including all surrounding circumstances, any unusual features of the transaction and the manner in which the parties intended to implement it.^[9]
39. Although the agreements between the Respondent and consumers appear to express an intention to sell vehicles to the Respondent and for the Respondent to lease the vehicles back to those same consumers and for the consumers to have the option to buy back the vehicles, it is clear from the evidence before the Tribunal that consumers never intended to sell their vehicles to the Respondent. The so-called purchase price bears no relation to the actual value of the vehicles and is instead the amount that consumers wished to borrow.
40. It is also clear from the consumers' complaints that what they really wanted to do was borrow money from the Respondent.
41. Further, the Respondent has stated that it did not want the vehicles, hence consumers could "rent" them back from the Respondent. The only time which the Respondent took possession of the vehicles is when consumers were unable to meet their monthly repayments.
42. Taking the above factors into consideration, it is clear that the agreements were in fact secured loans. A secured loan is defined in Part 1 of the NCA as "....an agreement, irrespective of its form but not including an instalment agreement, in terms of which a person—
- (a) advances money or grants credit to another, and
 - (b) retains, or receives a pledge to any movable property or other thing of value as security for all amounts due under that agreement;

43. That being so, all the provisions of the NCA relating to credit agreements are applicable to the transactions entered into by the

Respondent, including that the Respondent should have registered as a credit provider with the NCR.

44. The Tribunal also notes that the facts of this matter are similar to the facts in other matters which have already been dealt with by the Tribunal; the Tribunal found these schemes to be prohibited under the NCA.[10]
45. Although the finer details of each scheme is different, their essential nature is the same. Consumers who are desperate for money,[11] use their paid-up motor vehicles in order to obtain what they believe are loans. When they are unable to repay their loans, the lender simply repossesses their vehicles which is the first time that unsuspecting consumers realise that they have in fact transferred ownership in their vehicles to the lender. The lender does not comply with any of the requirements of the NCA and repossesses the vehicles without following any kind of legal process.
46. In addition to the above, the possibility of reckless credit needs to be considered. Section 80(1)(a) of the NCA states:

“80. Reckless credit.—(1) A credit agreement is reckless if, at the time that the agreement was made, or at the time when the amount approved in terms of the agreement is increased, other than an increase in terms of section 119 (4)—

- (a) the credit provider failed to conduct an assessment as required by section 81 (2), irrespective of what the outcome of such an assessment might have concluded at the time; or”

47. The Tribunal has found that the Respondent failed to conduct assessments as required by section 80(1)(a) of the NCA.

48. Section 83 of the NCA states:

“83. Declaration of reckless credit agreement.—

- (1) Despite any provision of law or agreement to the contrary, in any court or Tribunal proceedings in which a credit agreement is being considered, the court or Tribunal, as the case may be, may declare that the credit agreement is reckless, as determined in accordance with this Part.
- (2) If a court or Tribunal declares that a credit agreement is reckless in terms of section 80 (1) (a) or 80 (1) (b) (i), the court or Tribunal, as the case may be, may make an order—
- (a) setting aside all or part of the consumer’s rights and obligations under that agreement, as the court determines just and reasonable in the circumstances; or
- (b) suspending the force and effect of that credit agreement in accordance with subsection (3) (b) (i).”

49. The Tribunal finds that the credit agreements entered into by the Respondent were reckless. The Tribunal therefore deems it just and reasonable that all the consumer's obligations under those agreements be set aside. All the consumers are therefore to be reimbursed with all fees and charges paid to the Respondent under those agreements.
50. It follows that any current legal proceedings initiated by the Respondent to sell or attach vehicles under the credit agreements cannot continue. Any judgments obtained by the Respondent against consumers must also be rescinded.

FINDINGS

51. The Respondent is not a registered credit provider. Consequently, it did not comply with any of the requirements of the NCA. It did not conduct any affordability assessments in accordance with section 81 before granting loans to consumers. When it charged consumers rent for using their motor vehicles, this was in fact, a disguised form of interest repayments; these charges and fees are not provided for by the NCA and are well in excess of the interest rates prescribed by Regulation 42[12] read with Section 101 of the NCA. The Respondent did not comply with any of the requirements of the NCA before repossessing and/or selling the motor vehicles. The conclusion is inescapable that the Respondent intentionally disguised the transactions to evade the requirements of the NCA.
52. The Respondent is therefore found to have engaged in prohibited conduct by contravening numerous sections of the NCA.
53. It follows that the Respondent must be interdicted from continuing its operations as a credit provider.
54. The Tribunal considered the imposition of an administrative fine but considering the fact that Quattro is now under liquidation, it would not be appropriate. It would be more appropriate for the liquidator to use whatever assets the company may have to reimburse consumers.

ORDER

55. Accordingly, the Tribunal makes the following order:
 - 55.1 The Respondent is declared to have engaged in conduct prohibited by the NCA;
 - 55.2 The Respondent is interdicted from entering into any further credit transactions with consumers or operating as a credit provider;
 - 55.3 All the credit agreements entered into between consumers and the Respondent are declared reckless. All the consumers' obligations in terms of these agreements are set aside. All the consumers are to be reimbursed with all fees and the charges paid to the Respondent in terms of those agreements;

55.4 The Respondent is interdicted from proceeding with any current civil proceedings against consumers under the credit agreements. The Respondent is to rescind any judgments obtained against any consumers;

55.5 The Tribunal further orders that the Respondent appoint an independent auditor at its own cost. The auditor must determine all the amounts paid by the consumers under the credit agreements with the Respondent. All the amounts paid must be reimbursed to all the consumers. The auditor must provide a comprehensive report, regarding the consumers identified and the refunded amounts, to the NCR within 90 days of this judgment being issued; and

55.6 There is no order as to costs.

DATED ON THIS 29th day of September 2019

[signed]

Prof T Woker

Presiding Tribunal member

Dr L Best (Tribunal member) and Prof B Dumisa (Tribunal member) concurring.

- [1] See annexure JB2 (pages 42ff) ; JB3(pages 67ff) and JB5 (pages 95ff) of the papers before the Tribunal.
- [2] See for example the complaint of Mr Nyathi (JB2) where he states “ I took out a loan against my fully paid car on 28.3.18. The loan amount was R20 000. The monthly repayment amount was R6500 which I was to pay 30 days after I received the loan”. Mr Jadoo (JB3) states that he applied for a 1 month loan from Quattro and Ms Bucwa (JB5) states that she applied for a R35 000 loan and was required to pay back R46 000 after 30 days.
- [3] 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)
- [4] See Kunst, Borraine, Burdette Meskin’s Insolvency Law 6.12.1.
- [5] The process regarding the liquidation of companies is prescribed by the Companies Act 61 of 1973 (“Old Companies Act”). The Old Companies Act has been repealed by the Companies Act Number 71 of 2008, which came into operation on 1 May 2011, in terms of government gazette number 34243 dated 20 April 2011. Schedule 5 of Act Number 71 of 2008 contains transitional arrangements. Item 9 of schedule 5 provides for the continued application of the Old Companies Act to liquidations and winding up.
- [6] See for example Rooibos Ltd v South African Competition Commission, Competition Commission v Rooibos Ltd and Another (129/CRDec08)

- [2009] ZACT 58 (29 September 2009) where the Competition Tribunal, a tribunal with a similar role to the National Consumer Tribunal, explained that the nature of the Tribunal's powers were sui generis; it was not a civil court nor a criminal court (at para 5).
- [7] See for example Long Oak Ltd v Edworks 1994 (3) SA 370 (SE) at 375.
- [8] See for example Zandberg v Van Zyl 1910 (AD) and Roshcon (Pty) Ltd v Anchor Auto Body Builders CC 2014 (4) SA 319 (SCA). In these cases the court held that the principle “plus valet quod agitur quam quod simulate concipitur” applies. Essentially this principles means that substance rather than form determines the nature of transaction.
- [9] Roshcon (Pty) Ltd v Anchor Auto Body Builders CC 2014 (4) SA 319 (SCA).
- [10] National Credit Regulator v Allied Capital (Pty) Ltd (NCT/41672/2016/140)
- [2017] ZANCT 77 (28 April 2017) SAFLII; National Credit Regulator v CMR Group (Pty) Ltd NCT/19696/2018/57(1) 12 August 2019 and National Credit Regulator v Option Deals (Pty) Ltd NCT/128364/2019/140(1) 15 September 2019
- [11] It seems from the evidence before the Tribunal that these consumers would not be able to obtain loans in the ordinary sense because they are already highly indebted. Mr Le Warne confirmed this when he informed the inspectors that the consumers which approach Quattro for money did not qualify for loans.
- [12] GNR.489 of 31 May 2006: Regulations made in terms of the National Credit Act, 2005 as amended. Consumers indicated that they were being charge a rate which amounted to 30% per month.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANCT/2019/152.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/national-credit-regulator-v-quattro-unknown-topic-ant-2019>

Prepared on 10 October 2026 · Esheria