

SOUTH AFRICA / JUDGMENT

## NCA Billings v Nel (NCT/170270/2020/141(1) NCA) [2021] ZANCT 45 (20 September 2021) [2021] ZANCT 45

COURT

National Consumer Tribunal

BEFORE

J Simpson, A Potwana, F Manamela

CASE / FILE NUMBER

NCT/170270/2020/141(1) NCA

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/170270/2020/141(1) NCA

In the matter between:

RASHIDA BILLINGS

APPLICANT

And

HENDRIK CHRISTOFFEL NEL

RESPONDENT

Coram

Adv J Simpson - Presiding Tribunal Member

Mr A Potwana

- Tribunal Member

Mr F Manamela - Tribunal Member

Date of consideration (in chambers) - 17 September 2021

Date of Judgment

- 20 September 2021

## LEAVE TO REFER JUDGMENT AND REASONS

### THE PARTIES

1. The Applicant in this matter is Rashida Billings, an adult female residing in Cape Town (“the Applicant” or “Ms Billings”).
2. The Respondent is Hendrik Christoffel Nel, a registered debt counsellor with registration number NCRDC 2686 (“the Respondent” or “Mr Nel”).

### APPLICATION TYPE

3. This is an application in terms of Section 141(1) of the National Credit Act, Act 34 of 2005 (“the NCA”).
4. Section 141(1) of the NCA states the following –

*“Referral to Tribunal.—(1) If the National Credit Regulator issues a notice of non-referral in response to a complaint other than a complaint concerning section 61 or an offence in terms of this Act, the complainant concerned may refer the matter directly to—*

  - (a) the consumer court of the province within which the complainant resides, or in which the respondent has its principal place of business in the Republic, subject to the provincial legislation governing the operation of that consumer court; or
  - (b) the Tribunal, with the leave of the Tribunal.”
5. Therefore, before the Tribunal can hear the matter, it must first consider whether leave should be granted.

### BACKGROUND

6. In August 2018, Ms Billings applied to Mr Nel to be placed under debt review. Ms Billings alleges that Mr Nel failed to obtain a court order placing her under debt review but still proceeded to amend her status with the credit bureaus and charged court order fees. Due to the debt review listing, she cannot obtain credit life cover insurance. She wants her status as being under debt review removed to enable reinstatement of her credit life cover insurance.
7. On 22 July 2019, Ms Billings lodged a complaint with the National Credit Regulator (“NCR”). The NCR issued a Notice of non-referral dated 3 September 2020. The Notice contains the investigation results and concludes that there was no evidence of prohibited conduct by Mr Nel.
8. On 13 October 2020, Ms Billings filed her complete application with the Tribunal. She also filed an application to condone the late filing of the application. Condonation for the late filing was granted in a written judgment dated 4 March 2021.

9. On 1 June 2021, Mr Nel filed his answering affidavit and applied for condonation for the late filing. Condonation for the late filing of the answering affidavit was granted in a written judgment dated 23 July 2021. Ms Billings did not file a replying affidavit. The matter was then set down for hearing on leave to refer.
10. In summary, Mr Nel submits that Ms Billings signed the necessary forms to initiate debt review on 6 August 2018. On 13 August 2018, he made a repayment proposal to the credit providers for all nine of the accounts, and all of them agreed to the proposal. On 11 October 2018, he submitted an application to the Tribunal for the agreed proposal to be made a Tribunal order. Ms Billings made four payments in terms of the agreed proposal, from August to November 2018. The payments for August and September 2018 were allocated to the debt counsellor fees. In December 2018, Ms Billings disputed the payment made after being distributed by the Payment Distribution Agent ("PDA"). She again did not pay in January 2019. In February 2019, she made another payment, but due to the loss suffered by the PDA in December 2018, it recovered its payment from the February 2019 payment.
11. Ms Billings did not make further payments, and Mr Nel terminated the debt review in April 2019. The Tribunal lapsed the pending debt review application. Mr Nel submits that he complied with all his responsibilities and only charged the fees he was permitted. All the debt review forms and supporting evidence are attached to his answering affidavit.
12. The Notice of non-referral issued by the NCR confirms there is no evidence of Mr Nel overcharging fees or not complying with his responsibilities.

#### APPLICATION FOR LEAVE

13. In terms of section 141(1) of the NCA, the Applicant may only refer the matter directly to the Tribunal with leave of the Tribunal.
14. Previously, the Tribunal held a formal hearing on leave to refer with all the parties present. In the matter of *Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd and Others* (Case no 314/2020) [2021] ZASCA 91 (25 June 2021) SAFLII, the court provided useful guidance to the Tribunal in decisions regarding leave to refer. It held that a formal hearing on leave to refer was unnecessary, there was no test to be applied and the decision to consider leave could not be appealed. The court held –

*"[15] As I have explained, the NCA provides for an expeditious, informal and cost-effective complaints procedure. Section 141(1)(b) confers on the Tribunal a wide, largely unfettered discretion to permit a direct referral. The NCA does not require a formal application to be made and it is not necessary for purposes of the present appeal, nor is it desirable, to circumscribe the factors to which the Tribunal should have regard. There is no test to be applied in deciding whether or not to grant a direct referral to it in respect of a complaint. The purpose of the provision is simply for the Tribunal to consider the complaint afresh, with the benefit of any findings by the Regulator, and to decide whether it deserves its attention. Circumstances which may influence its decision may include the prospects of success, the*

*importance of the issue, the public interest to have a decision on the matter, the allocation of resources, the complainant's interest in the relief sought and the fact that the Regulator did not consider that it merited a hearing before the Tribunal. The list is not intended to be exhaustive."*

15. As there is no test to be applied, the Tribunal will consider the matter in the general context of the circumstances as submitted by the parties.
16. Firstly, it must be noted that Ms Billings made very general allegations against Mr Nel without providing any detail or context whatsoever. She did not reference any sections or provisions of the NCA which were contravened. The only useful information before the Tribunal is contained in the non-referral notice from the NCR and Mr Nel's answering affidavit.
17. The evidence before the Tribunal does not disclose any indication of prohibited conduct on the part of the Respondent.
18. It appears that Ms Billings' primary concern is that she is still listed as being under debt review with the credit bureaus. In this regard, Ms Billings did not follow the correct process in pursuing the complaint.
19. The NCA prescribes a specific process that must be followed to challenge information held by a credit bureau. In terms of section 72(1)(c)(ii) and (d) of the NCA, Ms Billings is entitled to challenge the accuracy of any information concerning her that is held by any credit bureau and require the relevant credit bureaus to investigate the accuracy of any challenged information without charge to her. In terms of section 72(3) of the NCA, the relevant credit bureau must provide evidence of the challenged information to her or remove the information and all record of it from its files if it is unable to provide credible evidence in support of the information.
20. If the credit bureau refuses to remove any incorrect information, she may lodge a complaint with the NCR for investigation. In terms of section 72(5) of the NCA, a credit bureau may not report any challenged information until the challenge has been resolved. The NCR can further investigate whether the Respondent should have advised the credit bureaus that Ms Billings' debt review process was terminated.
21. The Tribunal can note (based on the information presented in this matter) Ms Billings is no longer under debt review as the debt counsellor terminated the process before it was finalised. There is no evidence that a Court or the Tribunal has made a debt review order.

## CONCLUSION

22. At this stage, there is no evidence of any prohibited conduct by the Respondent that the Tribunal needs to consider.
23. The Applicant did not follow the process set out in section 72 of the NCA to challenge the information held by the credit bureau.

24. Tribunal finds that the Applicant has not provided any basis for leave to refer to be granted.
25. She is at liberty to follow section 72 of the NCA to challenge the disputed information. She can further approach the Credit Ombudsman, which deals with any disputes regarding credit listings.

#### ORDER

26. Accordingly, the Tribunal makes the following order –

26.1 The Applicant's application for leave to refer the matter directly to the Tribunal is refused; and

26.2 There is no order as to costs.

THUS DONE IN PRETORIA ON THIS 20TH DAY OF SEPTEMBER 2021

[signed]

Adv. J. Simpson

Presiding Tribunal Member

Mr A Potwana (Tribunal Member) and Mr F Manamela (Tribunal Member) concurring

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