

SOUTH AFRICA / JUDGMENT

Nedbank Limited v Mahlangu and Others (NCT/17147/2014/165)

[2015] ZANCT 5 (23 February 2015)

[2015] ZANCT 5

COURT

National Consumer Tribunal

BEFORE

F Manamela, B Dumisa, F Sibanda

CASE / FILE NUMBER

NCT/17147/2014/165

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Policy

IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

AT CENTURION

Case

number: NCT/17147/2014/165

In

the matter between:

NEDBANK
LIMITED.....APPLICANT
and
PF
MAHLANGU.....FIRST
RESPONDENT
STANDARD
BANK
LIMITED.....SECOND
RESPONDENT
EDGARS
A DIVISION OF
EDCON.....THIRD

RESPONDENT

Coram: Adv
F Manamela – Presiding member
Prof
B Dumisa – Member
Mr
F Sibanda – Member
Date
of Hearing – 26 November 2014

JUDGMENT

AND REASONS

THE PARTIES

1. The Applicant is Nedbank Limited, a credit provider registered in terms of the National Credit Act, No 34 of 2005 (“the NCA”) (hereinafter referred to as “the Applicant”).
2. The First Respondent is a consumer who applied for a debt re-arrangement agreement to be made an order of the Tribunal in terms

of section 138 of the NCA.

3. The Second and Third Respondents are credit providers registered in terms of the NCA.

JURISDICTION

4. The Applicant lodged an application with the Tribunal in terms of section 165 of the NCA for the variation of the order granted by a single member of the Tribunal in accordance with section 138(1) of the NCA.
5. The Tribunal has jurisdiction to hear this matter.

ISSUES

TO BE DECIDED

6. The Tribunal must determine whether there are grounds to vary the order granted.

BACKGROUND

7. In 2012 the consumer applied in terms of section 138(1) of the NCA to have a debt re-arrangement agreement made an order of the Tribunal.
8. The application was considered by a single member of the Tribunal, Adv N Sephoti, and the order was granted on 30 September 2012, under reference NCT/...

9. In August 2014 the Applicant lodged an application with the Tribunal for the variation of the order.
10. The matter was set down for hearing on 26 November 2014.

THE HEARING

11. At the hearing the Applicant was represented by Ms M Orsmond of Hammond Pole Attorneys.
12. There was no appearance by any of the Respondents or their representatives at the hearing.
13. Ms Orsmond explained to the Tribunal that the reason for the application is that the repayment term for the Nedbank, in respect of account No [...], is too long. Therefore the Applicant wants to reduce the repayment term.
14. However, she admitted that the application

“...does not actually set out whether it was done in error or it is ambiguous or it is vague. I would think with this matter we should rather go back to the debt counsellor, see what the consumer can afford, what we can propose, whether both parties can actually come to an agreement.”

APPLICABLE LAW

15. Section 165 of the NCA states the following –

“Variation of order

165. The Tribunal, acting of its own accord or on application by a person affected by a decision or order, may vary or rescind its decision or order –
 - (a) erroneously sought or granted in the absence of a party affected by it;
 - (b) in which there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission; or
 - (c) made or granted as a result of a mistake common to all the parties to the proceedings”.

CONSIDERATION OF THE FACTS AND THE LAW

16. Section 165 of the NCA lays down specific circumstances under which an order may be varied or rescinded, and these are instances where:
 - (a) an order was erroneously sought or granted in the absence of a party affected by it
 - (b) there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission; or
 - (c) an order was made or granted as a result of a mistake common to all the parties to the proceedings.

17. The application to have the debt re-arrangement agreement made an Order of the Tribunal was lodged in
2012. In considering the application, the Tribunal Member had regard to the acceptance letters signed by the credit providers, indicating their acceptance of the debt re-arrangement proposal.
18. The Applicant also signed a letter of acceptance at the time, contained on page 7 of the bundle of documents.
19. The decision to grant an order takes into account the totality of the agreement, comprising various other creditors, besides Nedbank in this instance, and the consumer's ability to re-pay the debt.
20. To change the agreement in the manner sought by the Applicant changes the debt re-arrangement permutation previously agreed to.
21. The Applicant agreed to re-look into the matter.

CONCLUSION

22. The Applicant did not provide cogent reasons to justify a variation of the order.
23. There is no indication that any of the factors outlined in section 165 of the NCA arise in this matter.

ORDER

24. Under the circumstances and for the reasons stated above, the Tribunal orders as follows:
 - a. The application to vary the order granted by the Tribunal is dismissed;
 - b. There is no order as to costs.

DATED THIS 23rd DAY OF FEBRUARY 2015

[signed]

FK Sibanda

Member

Adv F Manamela (Presiding Member) and Prof B Dumisa (Member) concurring.

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