

SOUTH AFRICA / JUDGMENT

Nedbank Limited v Mbili and Others (NCT/17149/2014/165)

[2015] ZANCT 6 (23 February 2015)

[2015] ZANCT 6

COURT

National Consumer Tribunal

BEFORE

F Manamela, B Dumisa, F Sibanda

CASE / FILE NUMBER

NCT/17149/2014/165

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Policy

IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

AT CENTURION

Case

number: NCT/17149/2014/165

In

the matter between:

NEDBANK
LIMITED.....
APPLICANT
and
WT
MBILI.....FIRST
RESPONDENT
JD
GROUP (PTY)
LTD.....SECOND
RESPONDENT
AFRICAN
BANK

LIMITED.....
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 confirmed as 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 2010 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, Adv N Sephoti, and granted on 15 February 2011.

9. In August 2014 the Applicant lodged an application with the Tribunal for the variation of the order granted.
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 bringing the application for variation of the order is because the repayment term for the Nedbank account No [...] is too long.
14. A new acceptance letter was signed by Nedbank reflecting a new repayment start date of April 2013, for 24 months, at R1 700 at an interest rate of 7% per annum. The next cascading payment would commence in April 2015 for two months at R1 836.71, also at an interest rate of 7% per annum and the final cascading would start in June 2015 for seven monthly payments, at R1 934,29 at a rate of interest of 7% per annum.
15. The new repayment period is 33 months compared to the current 79 months at R1000 per month at an interest rate of 12% per annum.

APPLICABLE LAW

16. 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

17. 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
18. When asked to address the Tribunal on the grounds for seeking a variation of the order, taking into account the factors listed in section 165 of the NCA, Ms Orsmond responded as follows:
- “Well as I can see from our application, we did not set out a proper reason in terms of Section, well in, yes, Section 165 of the NCA, we just said that the account were not solved, we do not really state whether it was done in error or it was ambiguous or anything, that our own reason is very vague, because we can, I can explain to you why it were not solved, as I did, where it saying in terms of the 33 months, but we did not set it out as per the rules of the NCA[1].”*
19. The application to have the debt re-arrangement agreement made an Order of the Tribunal was lodged in
2010. 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.
20. The Applicant also signed a letter of acceptance at the time, contained on page 10 of the bundle of documents.
21. 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 repay the debt.
22. To change the agreement in the manner sought by the Applicant changes the debt re-arrangement permutation previously agreed to.

CONCLUSION

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

ORDER

25. 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.

[1] Page 10 of the hearing transcript.

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