

SOUTH AFRICA / JUDGMENT

Nel v First National Bank (NCT/165006/2020/141(1)(b)) [2022] ZANCT 4 (30 January 2022) [2022] ZANCT 4

COURT

National Consumer Tribunal

BEFORE

L. Best, N. Maseti, A. Potwana

CASE / FILE NUMBER

NCT/165006/2020/141(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD On-Line TEAMS Platform

Case Number: NCT/165006/2020/141(1)(b)

In the matter between:

MACHEL MARGARETHA NEL

APPLICANT

and

FIRST NATIONAL BANK a division of

FIRSTRAND BANK LIMITED

RESPONDENT

Coram:

Dr L. Best

- Presiding Tribunal member

Ms N. Maseti - Tribunal member

Mr A. Potwana - Tribunal member

JUDGMENT AND REASONS

THE PARTIES

1. The Applicant is Machel Margaretha Nel, a major female person, (hereinafter referred to as “the Applicant”). At the hearing, the Applicant was represented by Mr Diederik Johannes Putter, who had submitted an affidavit confirming that he had knowledge of the matter due to his personal relationship with the Applicant.
2. The Respondent is First National Bank, a division of FirstRand Bank Limited, a public company duly incorporated and registered in terms of the corporate laws of the Republic of South Africa, hereinafter referred to as “the Respondent”. The Respondent is registered as a credit provider in terms of section 40 of the National Credit Act 34 of 2005 (“the NCA”). At the hearing, the Respondent was represented by Mr Ten Napel, an attorney from Van Coller Inc. Attorneys & Conveyancers.

APPLICATION TYPE AND JURISDICTION

3. The application brought before the National Consumer Tribunal (“the Tribunal”) is in terms of section 141(1)(b) of the NCA. The Tribunal had granted the application for leave to refer the matter in a judgment issued in April 2021. The Tribunal now proceeds to consider the merits of the matter.
4. In terms of section 27(a)(i) of the NCA the Tribunal has jurisdiction.

BACKGROUND

5. On or about 15 May 2018, the Applicant filed a complaint with the National Credit Regulator (“the NCR”) alleging that in August 2016, she was granted a loan of R16 000 by the Respondent; and a further loan of R21 000 in June
2017. The Applicant is of the view that she did not qualify to be granted the loans based on her available financial means. The NCR investigated the matter. The Respondent provided the NCR with detailed information regarding the assessment processes it followed to determine affordability, prior to granting the Applicant the loans. The Respondent further indicated that the first loan was settled on payout of the second loan. Accordingly, the Applicant only remained with one loan from the Respondent.
6. On 22 May 2019, the NCR issued a letter stating that the Applicant’s complaint did not allege facts which, if true, would constitute a ground for a remedy under the NCA and issued a Notice of Non-Referral. The Applicant subsequently filed the s141(1)(b) leave to refer application with the Tribunal.
7. At the Tribunal hearing convened on 2 March 2021 to consider the application for leave to refer the matter to the Tribunal, there was no appearance by the Respondent. Following the granting of leave to refer, the Tribunal granted the Respondent’s condonation application for the late filing of its answering affidavit.
8. On 21 November 2021, the Registrar issued a Notice of Set Down for the merits of the application to be heard on 17 January 2022.

THE HEARING

9. At the start of the hearing, the Respondent's representative requested to address the Tribunal with a preliminary query to the Applicant, which had a material bearing on the matter. The Respondent indicated that on 1 December 2021, it had sent correspondence dated 30 November 2021 to the Applicant via email. This correspondence informed the Applicant that the debt on the outstanding loan of the Applicant had prescribed and having so expired, the balance due was extinguished. On this basis, the Respondent would not be pursuing enforcement of the outstanding balance due on the loan. The Respondent had not received any response from the Applicant and wished to enquire whether the Applicant had considered this information as shared in the said correspondence.
10. The Applicant's representative indicated that the device that the Applicant used to receive emails had been lost during November 2021, and thus the Applicant had not had sight of this correspondence from the Respondent. The Applicant further indicated that the purpose of the application to Tribunal had been to pursue relief of the financial distress being experienced as a result of the granting of the loan. As the confirmation from the Respondent now indicated that no further monies were due, there was no longer any need to further pursue the merits of the matter. The Applicant regarded the matter as settled.

ORDER

11. Accordingly, following from the concurrence between the parties, the Tribunal makes the following order: -

11.1. The debt complained of has been extinguished by prescription in terms of the Prescription Act 68 of 1969;

11.2. The Respondent will not take any steps to enforce the prescribed debt; and

11.3. No order is made as to costs.

Thus, done and dated 30 January 2022.

Presiding Tribunal Member Dr L. Best

Ms N. Maseti (Tribunal Member) and Mr A. Potwana (Tribunal Member) concur.

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