

SOUTH AFRICA / JUDGMENT

Pettenburger-Perwald and Another v Experato (Pty) Ltd and Others (NCT/10122/2013/148(1)P) [2013] ZANCT 54 (11 December 2013)

[2013] ZANCT 54**COURT**

National Consumer Tribunal

BEFORE

J Maseko, F Manamela, H Devraj

CASE / FILE NUMBER

NCT/10122/2013/148(1)P

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Policy

IN THE NATIONAL
CONSUMER TRIBUNAL
HELD IN
CENTURION

Case**Number:** NCT/10122/2013/148(1)P**In the matter****between:**

HANS
REINHARD PETTENBURGER-PERWALD (Debt Counsellor)
1st
APPELLANT
ANNELIZE
BOTH A 2nd
APPELLANT
EXPERATO
(PTY)LTD
1st Respondent
AFRICAN BANK
LIMITED 2nd
Respondent
OLD MUTUAL

FINANCE (PTY)
LIMITED
3rd Respondent
BAYPORT
FINANCIAL SERVICES (PTY)
LIMITED
4th Respondent
STANDARD BANK
OF SOUTH AFRICA LIMITED
5th Respondent
TRUWORTHS
LIMITED
6th Respondent
FOSCHINI RETAIL
GROUP (PTY)
LIMITED
7th Respondent

Coram:

Prof J Maseko
–
Presiding member
Adv
F Manamela
–

Member
Mrs H Devraj
–
Member
Date of hearing

–
11 December
2013

RULING AND
REASONS
APPELLENT

1.

The

First Appellant is Hans

Reinhard Pettenburger-Perwald, a debt counsellor (hereinafter referred to as “First Appellant”) conducting business in

Bloubergrand. He is also a registrant in terms of Section 40 of the National Credit Act, 34 of 2005 (the “NCA” or the “Act”) with registration number NCRDC 49.

2.

The T.I 148 form

was completed by the First Appellant on behalf of the consumer, Annelize Botha (hereinafter referred to as the “Second

Appellant”).

RESPONDENTS

3.

The

Respondents are Experato (Pty) Limited, African Bank Limited, Old Mutual Finance (Pty) Limited, Bayport Financial Services (Pty) Limited, Standard Bank of South Africa Limited, Truworths Limited and Foschini Retail Group (Pty) Limited (hereinafter referred

to as

“the Respondents”).

APPLICATION

TYPE

4.

The

Appellants brought an appeal to a full panel of the Tribunal in terms of Section 148(1) of the Act to the Tribunal, to appeal

a decision by

a single member.

BACKGROUND

5.

On

26 June 2013, Presiding member, Prof T Woker refused to confirm a debt re-arrangement agreement as an order of the Tribunal,

as per

case number NCT/8758/2013/138(1)(P). The order was issued to the parties on 5 July 2013.

6.

On

1 August 2013, the Second Appellant, through a registered debt counsellor, Hans Reinhard Pettenburger-Perwald, brought an application

in terms of Section 148(1) to appeal the decision of the single panel member.

7.

According

to the application form filed with the Tribunal, the grounds for appeal relate to the inability of the Applicant to repay the debt.

The First Appellant claims that the refusal was based on the Second Appellant having R2061.63 available to repay the debt, and the

Second Appellant required R2 118.59, but that the actual amount available by the Second Appellant was R2 362.85 which includes the installment amounts and fees.

8.

The

application did not meet the requirements as set out in Rule 26(5) and 26(6) of the Rules of the Tribunal[1].

9.

Rule

26(5) requires the appellant to :-

(a)

prepare

4 copies of the record of the ruling appealed against;

(b)

prepare

4 copies of the appeal documentation; and

(c)

index

and paginate such documents in separate bundles.

10.

Rule

26(6) requires that the bundles contemplated in subrule (5) must be delivered to the Registrar within 5 days of the filing of the

Respondent's replying affidavit or in the absence of a reply within 5 days of the lapse of the period provided for in subrule (4).

11.

On

the date of the hearing there was no appearance by the Appellants and the Respondents, or a representative for either party.

DISMISSAL

OF APPLICATION

12.

As

stated above, there was no appearance by either the parties and nor was there any representatives on the date of the hearing.

Whilst Rule 26(9) provides for parties and their legal representative having to appear at the appeal hearing none of them did.

This was despite the fact that all the parties were issued with a set down notice on 22 November 2013. They are therefore deemed to

have known that they were required to attend the hearing.

13.

Rule

24(1) – (3) of the Rules of the Tribunal, regarding

non-appearance, provides that:

“(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 subrule
(1)
(3) If a matter
is dismissed, the Registrar must send a copy of the ruling to the
parties.”
14.
From
file information, the notice of set down was sent to all the parties
by the Registrar’s office via e-mail on 22 November
2013.
15.
There
has been no formal application filed for a postponement in this
matter, by any of the parties and nor was the matter withdrawn
by the
Apellants.
16.
The
Tribunal was satisfied that the parties were properly notified of the
date, time and venue for the proceedings.
17.
The
appeal was then formally dismissed by the Tribunal.

RULING

Accordingly, the Tribunal hereby rules that the appeal lodged in terms of Section 148(1) of the Act is hereby dismissed.

Handed down in Centurion on this 22nd day of January 2014.

[signed]

Mrs H Devraj

Tribunal Member

Prof J Maseko (Presiding Member) and Adv F Manamela (Tribunal Member) concurring

[1] For the Conduct of Matters before the National Consumer Tribunal published under GN789 in GG30225 of 28 August 2007 as amended by GenN428 in GG34405 OF 29 June 2011 (hereinafter “the Rules of the Tribunal”).

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