

SOUTH AFRICA / JUDGMENT

Sager v African Bank Limited and Others (NCT/88026/2017/165(1)) [2017] ZANCT 136 (8 November 2017) [2017] ZANCT 136

COURT

National Consumer Tribunal

BEFORE

A Potwana, J Simpson, K Moodaliyar

CASE / FILE NUMBER

NCT/88026/2017/165(1)

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII

Policy

IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

Number: NCT/88026/2017/165(1)

In

the matter between:

SENAY
SAGER
APPLICANT
NCRDC
2484
And
CELESTINE
MORALE
CONSUMER
ID
NO: [...]
AFRICAN
BANK LIMITED
1st

RESPONDENT
CAPITEC
BANK LIMITED
2nd
RESPONDENT
HOMECHOICE
(PTY)
LTD 3rd
RESPONDENT
RESIDUAL
DEBT SERVICES LIMITED FORMERLY AFRICAN
4th RESPONDENT
BANK
LIMITED (IN CURATORSHIP)

Coram: Mr.
A. Potwana - Presiding
member
Adv
J. Simpson -
Tribunal Member
Prof.
K. Moodaliyar -
Tribunal Member
Date
of hearing -
26 October 2017

JUDGEMENT

AND REASONS

APPLICANT

1. The Applicant is Senay Sager, a debt counsellor registered in accordance with the National Credit Act 34 of 2005 ("the Act")

(the "Applicant").

CONSUMER AND RESPONDENTS

2. The Consumer is Celestine Morale, who is under debt review. The First to the Fourth Respondents are all registered with the National

Credit Regulator as credit providers (hereinafter all the Respondents are collectively referred to as "the Respondents").

BACKGROUND

3. On 22 September 2016 a debt re-arrangement agreement between the Consumer and the First to Fourth Respondents was confirmed as an order of the Tribunal as per case number NCT/50427/2015/138(1)P.
4. On 14 August 2017 the Applicant lodged an application with the Tribunal in terms of Section 165(1) of the Act to have the order varied.
5. The basis of the Application is that the Consumer's loan agreement with Capitec Bank Limited was omitted from the order in error.
6. The Notice of Complete Filing was issued by the Registrar on 17 August 2017. The Notice of Set Down was issued by the Registrar on 20 September 2017 for the hearing on 26 October 2017.
7. On the date of the hearing there was no appearance by the Applicant, the Consumer, or any of the Respondents. The Registrar advised the Tribunal that the Applicant was contacted on the morning of the hearing but the Applicant did not intend appearing before the Tribunal and in fact intended to withdraw the matter. No withdrawal form had however been filed.

DISMISSAL OF APPLICATION

8. As stated above there was no appearance by the Applicant, Consumer or the Respondents or any representative on the date of the hearing.
9. Rule 24 of the National Consumer Tribunal Rules[1] provides that:
"Non appearance
 - (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 of subrule (1)
 - (3) Is a matter is dismissed, the Registrar must send a copy of the ruling to the parties."

10. The Presiding Member of the Tribunal was satisfied that the parties were properly notified of the date, time and venue for the proceedings.
11. The application was then formally dismissed by the Tribunal on record - extempore.
12. The Tribunal noted that the original application for the consent order did not contain any reference to a loan agreement with Capitec

Bank Limited. It appears to the Tribunal that the existence of the Joan agreement with Capitec Bank Limited was only realised after the application was filed and the order granted. There is no apparent evidence of any error, omission, ambiguity or mistake made in the original consent order. There is no apparent basis for a variation of the order under Section 165 of the Act.

ORDER

13. Accordingly, the Tribunal hereby confirms the ex-tempore order issued at the hearing stating that:

13.1 The application lodged in terms of Section 165 of the Act is hereby dismissed; and

13.2 There is no order as to costs.

DATED ON THIS 8th DAY OF NOVEMBER 2017

[signed]

Adv J Simpson

Tribunal Member

Mr. A Potwana (Presiding member) and Prof K Moodaliyar (Tribunal member) concurring

[1] GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007 (Government Gazette No. 30225). as amended by Government Gazette Date GN 428 Notice 34405 of 29 June 2011 and Government Gazette GNR.203 Notice 38557 of 13 March 2015

[1] GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007 (Government Gazette No. 30225).

as amended by Government Gazette Date GN 428 Notice 34405 of 29 June 2011 and Government Gazette GNR.203 Notice 38557 of 13 March 2015

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANCT/2017/136.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/sager-v-african-bank-limited-and-others-unknown-topic-anct-2017>

Prepared on 12 October 2026 · Esheria