

SOUTH AFRICA / JUDGMENT

Sager v National Credit Regulator (NCT/318886/2024/59(1)) [2025] ZANCT 7 (21 February 2025) [2025] ZANCT 7

COURT

National Consumer Tribunal

BEFORE

MC Peenze, N Maseti, S Hockey

CASE / FILE NUMBER

NCT/318886/2024/59(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case Number: NCT/318886/2024/59(1)

In the matter between: BENAY SAGER APPLICANT And NATIONAL CREDIT REGULATOR
RESPONDENTCoram: Dr MC Peenze Presiding Tribunal member Ms N Maseti Tribunal member Mr S Hockey
Tribunal member Date of the hearing: 18 February 2025 Date of judgment: 21 February 2025

JUDGMENT AND REASONS

THE PARTIES AND APPLICATION TYPE

1. The applicant is Benay Sager (the applicant), a registered debt counsellor under section 44(1) of the National Credit Act 34 of 2005 (the NCA), with registration number NCRDC2484.
2. At the hearing, the applicant was represented by Mr Cornel van Heerden, an attorney at VHT Incorporated Attorneys.
3. The respondent is the National Credit Regulator (the respondent or the NCR), an organ of the state and a juristic person established in terms of section 12 of the NCA to regulate the consumer credit market and ensure compliance with the NCA.
4. Louise Page, a legal advisor in the respondent's employ, represented the respondent at the hearing.

5. This is an application under section 59(1) of the NCA. The applicant seeks an order of the Tribunal to review and set aside the decision of the respondent to limit debt counsellors' access to certain functions on the respondent's Debt Help System (DHS). As per section 27(a)(i), the Tribunal has jurisdiction to consider and adjudicate this application.

TERMINOLOGY

6. A reference to a section in this judgment refers to a section in the NCA, and a reference to a regulation refers to the National Credit Act Regulations, 2006 (the regulations).[1] A reference to a rule in this judgment refers to the Rules of the National Consumer Tribunal.[2]

BACKGROUND

7. As mandated by the NCA, the NCR monitors the consumer credit industry in South Africa and monitors compliance with the NCA.
8. Under section 48(6), the NCR registers debt counsellors after they have consented to the registration conditions proposed by the NCR. On 18 May 2015, the NCR approved the applicant's registration as a debt counsellor and imposed general and specific conditions of

registration under section 48.[3] The general conditions imposed on the applicant include the following:

“The Debt Counsellor must comply with the requirements specified by the NCR in respect of registering consumers who apply for debt review, on the specified database. The Debt Counsellor must update such consumer records with the status of the review and post-review performance, from time to time.”[4]

9. The general conditions of registration are imposed for the following reasons:
 - (i) To facilitate the effective implementation of debt counselling as envisaged by the NCA;
 - (ii) To enable the NCR to assess and monitor the debt counsellor's compliance with the NCA, the relevant regulations, and the conditions of registration;
 - (iii) To promote professionalism, integrity and ethical behaviour in the provision of debt counselling services;
 - (iv) To safeguard the rights and Interests of consumers and credit providers in the provision of debt counselling services;
 - (v) To ensure that the NCR can gather the necessary statistics and information to monitor trends in over-indebtedness, monitor the effectiveness of debt counselling services, and report to the Minister as required by the NCA; and
 - (vi) To ensure that debt counsellors are kept abreast of changes in the relevant legislation, enabling them to provide sound advice and

accurate information to consumers.[5]

10. The NCR established a database on the internet called the Debt Help System (DHS), reflecting consumers' debt review status. The DHS serves as a tool to assist role players in the debt review process and reflects the stage of debt review of consumers under debt review. The NCR publishes circulars from time to time prescribing how debt counsellors should use the DHS, access details on the DHS, and make changes about consumers' debt review status.
11. The respondent issued its Debt Review Withdrawal Guidelines 2021 for the exit from the debt review process in May of 2021, with an additional explanatory note issued in March 2022. This circular was published to inform the credit industry of a change in procedure for updating the DHS. With effect from 7 March 2022, any update for certain status codes had to be done by submitting relevant documents to the NCR by email. The status codes affected by this circular included the following:
 - (i) A1 (applied for debt counselling and being assessed);
 - (ii) B (assessment had resulted in a rejection);
 - (iii) F1 (all restructured debts have been settled except the mortgage agreement);
 - (iv) F2 (all restructured debts have been settled);
 - (v) G (magistrate rescinded debt review court order);
 - (vi) G1 (application for debt review rejected by a magistrate);
 - (vii) I (consumer deceased); and
 - (viii) J (consumer sequestrated).
12. This circular impacted debt counsellors by preventing them from making changes and updates directly on the DHS system. Instead, they had to submit relevant documents to the NCR. After verifying the documents, the NCR would update the correct status code on the DHS. Further details were contained in Circular 3, issued in April 2022.
13. On 19 March 2024, the applicant applied with the Tribunal in terms of section 59(1) regarding the NCR's decision to limit his access to certain functions on the NCR's Debt Help System. The respondent alleges that the applicant's decision, as contained in the 2022 circulars, prevents him from fulfilling his statutory duties under the NCA and constitutes an amendment to his conditions of registration. He seeks to have the decision reviewed and set aside.
14. The respondent has filed an answering affidavit to oppose this review application.

APPLICABLE LAW

15. Section 59 empowers the Tribunal to review decisions made by the NCR. Subsection (1) states that a person affected by a decision of the NCR

under “this Chapter”[6] may apply to the Tribunal to review that decision, and the Tribunal may make an order confirming or setting aside the decision in whole or in part.

16. Section 59(2) outlines that an order contemplated in subsection (1) may include an order setting aside any condition attached to a registration if the Tribunal is not satisfied that the condition is reasonable and justifiable, having regard to the objects and purposes of the NCA, the circumstances of the application or review, as the case may be, and the provisions of section 48.

IN LIMINE MATTER

17. The NCR submitted that the application was brought more than 20 business days after circular 02/2022, entitled the "Revised Debt Help System ("DHS") procedure," was distributed in March 2022, and a follow-up circular was distributed in April 2022. This judgment collectively refers to these circulars as “the 2022 circulars”.
18. The 2022 circulars were issued to address an industry concern that the DHS had no quality controls built in to ensure that status updates were correct. As a result, supporting documents relating to debt review cancellations had to be submitted to the NCR.
19. The applicant confirmed that he had no problem with the 2022 circulars until the NCR started investigating a consumer’s complaint about her debt review status in 2023. As the complaint only arose in 2023, the applicant only realised the prejudice to himself and submitted that the prescribed 20-day period to bring a review application does not apply.

Consideration

20. Under rule 4, an applicant must comply with the requirements set out in Table 2 of the rules for the type of application being made, in respect of –
 - (a) the time within which the application must be made;
 - (b) the form to be used;
 - (c) documents and information required;
 - (d) any payable application fee;
 - (e) the parties requiring notification of the application; and
 - (f) the documents that must be served on them.
21. Table 2 outlines that an application to review an NCR decision under Chapter 3 of the NCA must be filed within 20 business days of the NCR’s decision or later if the Tribunal permits.
[7]

22. Based on the evidence, the Tribunal finds that the applicant filed his application late, nearly two years after the NCR's circulars were issued.
23. The applicant did not file an application to condone the late filing.
24. The applicant's argument that he only became aware of the alleged prejudice in 2023 is uncontested. The Tribunal is persuaded that the NCR's investigation of a consumer complaint against the applicant in 2023 sparked the applicant's awareness of the implications of the NCR's circulars. However, the details of this complaint are not before the Tribunal.
25. The Tribunal considered the nature of the relief sought, the extent and cause of the delay, the reasonableness of the explanation for the delay and the effect of the delay on the administration of justice.[8] The matter is important to both parties.[9] Based on an objective conspectus of all the facts, the Tribunal finds it in the interest of justice[10] to condone the late filing of the application.
26. Accordingly, the respondent's point in limine is dismissed.

THE MERITS

The applicant's argument

27. The applicant submitted that the NCR's 2022 circulars constitute a change of his conditions of registration. Concerning clause 4 of the general conditions of registration,[11] the applicant argued that the NCR expected debt counsellors to update consumer records on the specified database but then removed the debt counsellor's access to the database by issuing the 2022 circulars. According to the applicant, removing access to the database made it impossible for him to update consumers' debt review status on the DHS. Therefore, the applicant argued that the 2022 circulars constitute a decision which amended clause 4 of his general conditions of registration. The applicant stated that the NCR did not follow the procedure outlined in section 49 to amend his registration conditions. Further, by introducing new conditions through circulars, the NCR took a decision that prejudiced the applicant and directly harmed consumers.
28. The applicant argued that, by issuing the circular, the NCR acted ultra vires. It assumed the statutory responsibilities of a debt counsellor and overreached its regulatory authority. According to the applicant, the NCR is now making decisions regarding over-indebtedness and terminating debt review, which is the debt counsellor's responsibility. In addition, the applicant does not agree with the NCR's stance regarding cancelling a debt review application after signing Form 16.
29. The applicant requests that the Tribunal review the NCR's decision to remove the applicant's access to specific DHS codes.

The respondent's argument

30. The respondent argued that an administrative decision under part A of Chapter 2 may not be reviewed under Chapter 3 of the NCA. The circulars were not issued as a variation of conditions of registration under section 49 but in fulfilment of its duties in terms of section 15(c) of Part A of Chapter 2 of the NCA. The NCR has the statutory authority to monitor the consumer credit market and industry to ensure that prohibited conduct is prevented or detected and prosecuted. The applicant does not have the right to review the exercise of this right, decisions under this right, or any decision under this right under the provisions of section 59.

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31. To this end, the respondent explained why the circular was issued. The respondent issued the circulars as a proactive regulatory measure to protect the interests of consumers and ensure that reputational risks are mitigated. Thus, the circulars were not issued as a variation of the conditions of registration but as an ordinary function of the respondent.
32. According to the respondent, the applicant still has unlimited reading access to the DHS. Debt counsellors may still make the necessary updates to the status codes on DHS. The only difference is the manner and process according to which these updates must occur. Instead of changing the DHS codes directly on the NCR's online data system, the NCR now expects debt counsellors to provide

the applicable documentation through email. The NCR updates the DHS codes after verifying and authenticating the documents, such as court

orders.

CONSIDERATION

33. Section 15(c) empowers the NCR to monitor the consumer credit market and industry to ensure that prohibited conduct is prevented, detected, and prosecuted. Furthermore, the NCR has a statutory duty to protect consumers against unscrupulous registrants involved in activities which contravene the NCA and are prejudicial to consumers.
34. The NCR has become aware of the prevalent unlawful activities wherein consumers are placed under debt review without consent. Complaints have been received that some consumers pay exorbitant fees to debt counsellors or attorneys offering a service to remove consumers from debt review without following the statutory and lawful process. Upon investigation, it was established that these unlawful activities are enabled by the ability to update status codes on DHS, in which consumers may be removed from debt review without following due process. The NCR deemed it crucial to find a proactive and immediate solution to prevent the perpetuation of this practice on a larger scale. To prevent abuse of access to the DHS, the NCR limited editing access while the DHS's functionality was being upgraded. This upgrading process is continuing. Pending the finalisation of the required system controls, the respondent directed debt counsellors to submit the required

documentation to change a consumer's debt profile through email.

35. The Tribunal is persuaded that the NCR had not infringed upon the debt counsellors' authority to determine over-indebtedness or terminate debt review. The debt counsellor is expected to make such decisions as per the NCA. The NCR's DHS database is merely a tool and not a substitution for the decisions of a debt counsellor. As the NCR must ensure that any data in their database has been verified, the Tribunal accepts the respondent's

argument that the system must function optimally before allowing registrants direct access to changing consumer debt profiles.

36. The Tribunal finds that the NCR's decision to introduce a new procedure regarding the DHS status code updates does not hinder debt counsellors from fulfilling their statutory duty or make it impossible for the applicant to comply with the terms of the withdrawal guideline and their conditions of registration.
37. The duty to update the DHS, as set out in the withdrawal guidelines, must be read together with the procedure set out by the NCR in Circular 02 of 2022 - "revised DHS procedure to update status codes" and the explanatory note to the withdrawal guidelines 01 of 2021. The Tribunal is persuaded that these circulars reflect administrative decisions under part A of Chapter 2 of the NCA. They were not issued as a variation of conditions of registration under section 49 but in fulfilment of the NCR's duties in section 15(c) of Part A of Chapter 2 of the NCA. These decisions cannot be reviewed under Chapter 3 of the NCA. As the applicant brought his application under the provisions of section 59 of Chapter 3 of the NCA, the application is flawed and cannot be granted.
38. Further, the applicant failed to provide any evidence that his conditions of registration had been amended, directly or indirectly, by the circulars. The registration conditions allow the debt counsellor to update the NCR's database, but it remains the NCR's prerogative to outline how the upload process must unfold. As the circulars outlined the process of uploading documents to the specified database, the Tribunal finds no amendment or supplementation of the conditions of registration.
39. The NCR also invited the applicant to provide details should he suffer prejudice or harm due to this decision. On the evidence before the Tribunal, the applicant did not provide such details to the respondent.

CONCLUSION

40. The Tribunal finds that the NCR's decision to limit debt counsellors' access to certain functions on the respondent's DHS, as outlined in the 2022 circulars, rational and consistent with its statutory responsibilities articulated in section 15(c) of Part A of Chapter 2 of the NCA.
41. These circulars cannot be reviewed under section 59 of Chapter 3 of the NCA.

ORDER

42. Accordingly, the Tribunal makes the following order:

42.1 The application to review and set aside the respondent's 2022 circulars is refused; and

42.2 There is no cost order.

[signed]

Dr MC Peenze

Presiding Tribunal member

Tribunal members Mr S Hockey and Ms N Maseti concur.

[1] Published under Government Notice R489 in Government Gazette 28864 of 31 May 2006.

[2] Published under GN 789 in GG 30225 on 28 August 2007 as amended by GN 428 in GG 34405 on 29 June 2011, GN R203 in GG 38557 on 13 March 2015 and GN 157 in GG 39663 on 4 February 2016.

[3] See page 215 of the Tribunal record.

[4] See General Condition A4, page 215 of the Tribunal record.

[5] See page 217 of the Tribunal record.

[6] I.e. Chapter 3 which is headed "Consumer Credit Industry Regulation".

[7] See Table 2 of the Tribunal Rules, Part 1A: Applications directly to the Tribunal, row nr 4.

[8] See *Van Wyk v Unitas Hospital and Others* 2008(4) BCLR 442 (CC) at para 20 as applied in *Camagu v Lupondwana* Case No 328/2008 HC Bisho.

[9] See *Melane v Santam Insurance Company Limited* 1962 (4) SA 531 (A) at 532C-F.

[10] See *Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others* 2003 (11) BCLR 1212 (CC) at para [11].

[11] *Supra*, paragraph 8.

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Prepared on 10 October 2026 · Esheria