

SOUTH AFRICA / JUDGMENT

Shongwe v Lewis and Others (NCT/85465/2017/165(1)) [2017] ZANCT 115 (5 October 2017) [2017] ZANCT 115

COURT

National Consumer Tribunal

BEFORE

J Simpson, A Potwana, H Devraj

CASE / FILE NUMBER

NCT/85465/2017/165(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case Number: NCT/85465/2017/165(1)

In the matter between:

VELAPHI SHONGWE

APPLICANT

ID : [7...]

And

LORENCO LEWIS

FIRST RESPONDENT

AFRICAN BANK LIMITED

SECOND RESPONDENT

LEWIS STORES (PTY) LTD

THIRD RESPONDENT

EDCON (PTY) LTD

FOURTH RESPONDENT

Coram:

Adv. J Simpson – Presiding member

Mr. A Potwana – Tribunal Member

Ms. H Devraj – Tribunal Member

Date of hearing – 5 October 2017

JUDGEMENT AND

REASONS

APPLICANT

1. The Applicant in this matter is Velaphi Shongwe, an adult male, (hereinafter referred to as “the Applicant”).

RESPONDENTS

2. The First Respondent is Lorenzo Lewis a registered debt counsellor.
3. The Second to Fourth Respondents are registered credit providers.

JURISDICTION

4. The Applicant lodged an application with the Tribunal in terms of Section 165 of the National Credit Act, No 34 of 2005 (“the Act”). This section deals with applications for the varying or rescission of an order granted by the Tribunal. In this matter, the application was against an order issued by a single member of the Tribunal in accordance with section 138(1) of the NCA; read with section 86(8)(a) of the Act.
5. The Tribunal has jurisdiction to hear this matter as one lodged under section 165 of the Act, but provided it meets the standard that the section prescribes in peremptory terms.

BACKGROUND

6. During 2013, the debt counsellor applied for an order confirming the debt restructuring agreement between the parties as an order of the Tribunal. The order was granted and issued by the Tribunal on 16 April 2013 under case number NCT/8121/2013/138.
7. On 5 May 2017, the Applicant filed an application in terms of Section 165 for a rescission of the above mentioned order.

8. The Applicant submits in his application that he cannot enter into any credit agreements while under debt review. He further submits that he is currently making payments directly to the Respondents and is no longer utilising the services of the Debt Counsellor. He therefore wants to be removed from the debt review process, and requires that the order be rescinded to enable him to enter into further credit agreements.
9. The notice of complete filing was issued by the Registrar on 22 August
2017. The notice of set down was issued by the Registrar on 19 September 2017 for the hearing on 5 October 2017.
10. On the date of the hearing there was no appearance by the Applicant, or any of the Respondents. The Registrar advised the Tribunal that the Applicant had informed the Registrar's Office, on the day of the hearing, that he was still in Kwa-Zulu Natal and had not made any arrangements to be at the hearing.

DISMISSAL OF APPLICATION

11. As stated above there was no appearance by the Applicant or any representative on the date of the hearing.
12. Rule 24(1) of the National Consumer Tribunal Rules 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) if a matter is dismissed, the Registrar must send a copy of the ruling to the parties."
13. The Presiding member of the Tribunal was satisfied that the parties were properly notified of the date, time and venue for the proceedings.
14. The application was then formally dismissed by the Tribunal on record.
15. The Tribunal can note that there have been numerous applications brought under the auspices of Section 165 of the Act by consumers who no longer wish to be under debt review notwithstanding the fact that this provision does not find application in instances whereby a

consumer requests that he/she no longer wants to be under debt review. The peremptory requirements of Section 165 have to be met in order to vary or rescind an order that has been confirmed by the Tribunal. This means that applicants must present evidence of an error, omission, ambiguity or mistake made in the original consent order. Without such evidence, there is no apparent basis for the rescission of an order under Section 165 of the Act.

ORDER

16. Accordingly, the Tribunal confirms the following order issued at the hearing:

- (1) The application lodged in terms of Section 165 of the Act is hereby dismissed.
- (2) There is no order as to costs

DATED ON THIS 5TH DAY OF OCTOBER 2017

[signed]

Ms H Devraj

Presiding Member

Adv J Simpson (Presiding member) and Mr A Potwana (Tribunal member) concurring

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