

SOUTH AFRICA / JUDGMENT

Thuketana v Transunion Credit Bureau (Pty) Ltd (NCT/326495/2024/141(1)(b))

[2024] ZANCT 72 (3 December 2024)

[2024] ZANCT 72

COURT

National Consumer Tribunal

BEFORE

Z Ntuli, C Sassman, CJ Ntsoane

CASE / FILE NUMBER

NCT/326495/2024/141(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/326495/2024/141(1)(b)

In the matter between: MAKHAJANA PHILLIP THUKETANA APPLICANT and TRANSUNION CREDIT BUREAU (PTY) LTD RESPONDENT

Coram:

Ms Z Ntuli: Presiding Tribunal member

Adv C Sassman: Tribunal member

Mr CJ Ntsoane: Tribunal member

Date of hearing: 22 November 2024

Date of judgment: 3 December 2024

Last document received: 26 November 2024

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is Makhajana Phillip Thuketana (the applicant). The applicant is a consumer, as defined in section 1 of the National Credit Act 34 of 2005 (NCA). Mr Clive Nkuna of Tshiviri, Manzini, and Masetla Inc. represented the applicant at the hearing.

2. The respondent is TransUnion Credit Bureau (Pty) Ltd (respondent), a company incorporated under the company laws of the Republic of South Africa. It is a registered credit bureau with registration number NCRCB4. The respondent was not represented at the hearing.

TERMINOLOGY

3. A reference to a section in this judgment refers to a section of the NCA. A reference to a regulation refers to the National Credit Act Regulations, 2006 (the regulations).[1] A reference to a form refers to the prescribed forms set out in Schedule 1. A reference to a rule in this judgment refers to the

Rules of the Tribunal.[2]

APPLICATION TYPE

4. This is an application in terms of section 141(1)(b), in which the applicant, with leave granted by the Tribunal, seeks redress against the respondent. The applicant alleges that the respondent did not notify him of an adverse listing beforehand as required, and listed information that is inaccurate. The respondent does not oppose the application.

PROCEEDINGS ON A DEFAULT BASIS

5. The applicant served the notice and application on the respondent by hand delivery on 6 May 2024 and 15 May 2024, with proof of service on pages 2 to 4 and 47 of the record. The Tribunal Registrar also dispatched all notices, including set down, as well as the interlocutory and leave to refer judgments, to the respondent via registered mail. The panel is satisfied that the respondent was served correctly in compliance with the applicable rules.
6. Under rule 13(2), the respondent must serve an answering affidavit on the applicant within 15 business days of receiving the application. The respondent failed to comply with this requirement. The applicant did not pursue a default order under rule 25(2). Consequently, the registrar scheduled the matter for hearing on an unopposed basis, as the pleadings were deemed closed.
7. Under rule 13(5), any factual allegation in the application or referral not expressly denied or admitted in the answering affidavit is deemed admitted. As the respondent did not submit an answering affidavit, the allegations set forth in the applicant's application are regarded as admitted.

BACKGROUND

8. The referral arises from a complaint lodged by the applicant with the National Credit Regulator (NCR). The complaint pertains to the incorrect listing of the applicant's consumer information. The applicant alleged that the respondent recorded an adverse listing on his credit profile in contravention of the NCA in that it failed to give him notice beforehand as required. Further, the applicant alleges that the judgment amount listed by the respondent is incorrect.
9. According to the record, the South African Revenue Service (SARS) obtained a judgment under case number 7606/2020 from the Limpopo High Court (the SARS judgment), granted on a default basis on 7 December 2020. Attached to the SARS judgment is a document titled "Debt Management, Certified Statement" (submitted in terms of section 172(1) read with sections 172(2), (3), and 174 of the Tax Administration Act, No. 28 of 2011), which is signed by the Chief Registrar of the High Court of South Africa.
10. Consequently, the applicant complained to the respondent, challenging the accuracy of the SARS judgment listing on 8 July 2023, demanding its removal. The respondent advised the applicant that it had obtained credible evidence to support the listing and gave him a copy. Dissatisfied with the outcome, the applicant lodged a complaint with the NCR on 2 August 2023. After investigating the applicant's complaint, the NCR issued a notice of non-referral on 26 February 2024, dated 15 January 2024. It concluded that the complaint does not raise any facts that, if true, would give rise to a remedy under the NCA. Further, it said the 20 business days' notice required by regulation 19(4) before listing adverse information does not apply to judgments.
11. Dissatisfied with the NCR's decision, the applicant filed an application with the Tribunal on 6 May 2024. The application was submitted outside the prescribed 20-business-day period. He filed an application for condonation of the late filing. The Tribunal Registrar issued a notice of complete filing on 26 May 2024. Condonation was granted on 6 August 2024. A notice of complete filing was issued on 16 August 2024. The respondent was afforded 15 business days to submit an answering affidavit but failed to do so.
12. On 9 September 2024, a notice of set down was issued, scheduling the hearing for leave to refer on 4 October 2024, on an unopposed basis. The leave was granted, and again, the respondent failed to oppose the matter. The Tribunal Registrar set the hearing for 22 November 2024 unopposed. The matter was heard virtually via MS Teams.

THE APPLICANT'S

SUBMISSIONS

13. At the hearing, the applicant concisely outlined the basis of the application as follows:

13.1 The applicant was not notified of the SARS judgment before its listing, as required. Further, the respondent failed to verify and confirm that SARS had complied with this notification requirement before listing the SARS judgment. This contravenes section 72(1)(a), read with regulation 19(4)(b).

13.2 The respondent failed to verify the accuracy of the listed information on the applicant's credit profile by recording the amount as R1,231,288.00 instead of the correct amount of R1,231,288.62 stated in the SARS judgment. This contravenes section 70(2)(c) of the NCA, read with regulation 19(3).

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14. Regarding the alleged failure to notify, the applicant stressed all role players involved must ensure compliance with the NCA's provisions. Without reference to any specific provision of the NCA that places such an obligation on the respondent, the applicant averred that a credit bureau must verify that the credit provider notified the consumer before listing a judgment reported to it.
15. Concerning the inaccuracy of the listed information, the applicant contends that the respondent failed to take reasonable steps to verify the accuracy of the credit information reported to it as required in section 70(2)(c), read with regulation 19(3). According to him, the listed information is inaccurate, regardless of the size of the discrepancy amount. He stressed that this discrepancy severely prejudices him by misrepresenting his credit status and negatively

impacts his daily life and credit access prospects. Effectively, the discrepancy results in him being denied credit.

16. In the applicant's supplementary submission dated 26 November 2024, responding to the panel queries, the applicant cited the case of Director of Public Prosecutions, Eastern Cape v Klue,[3] in which the court held that the de minimis non curat lex principle does not apply where the legislature has specified statutory limits. The applicant also referred to R v Maguire,[4] where Beadle CJ noted that triviality depends on the specific circumstances.
17. Finally, the applicant cited Matome Piet Malesa v DMC Debt Management, a Division of OPCO 365 (Pty) Ltd,[5] emphasising that the Tribunal must accept the applicant's version in the absence of opposition. The applicant reiterated the relief he stated in the NCR Form 32 for the Tribunal to review and set aside the NCR's decision, instruct the respondent to temporarily remove the listing pending the finalization of the case before the Tribunal, and permanently remove the listing from his credit record.

CONSIDERATION OF THE EVIDENCE

18. The panel considered whether the respondent's listing of the SARS judgment without prior notice to the applicant, or verifying if SARS had notified the applicant, contravened the NCA, whether the respondent failed to take reasonable steps to verify the accuracy of the consumer credit information listed, and whether the applicant is entitled to the remedy he seeks:

18.1 Section 72(1)(a), read with regulation 19(4), obliges a credit provider to give a notice of 20 business days to the consumer before any prescribed adverse consumer credit information is reported to a credit bureau. Regulation 19(8) prohibits any source of information from submitting adverse information to a credit bureau without first giving the consumer the notice contemplated in regulation 19(4).

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18.2 The obligation to notify the applicant rests with the SARS as the source of such consumer credit information, not the respondent as a credit bureau. The applicant failed to convince the panel that the respondent was required to notify him of the SARS judgment. Further, the assertion that the respondent ought to have verified or obtained proof of notification by SARS is unsubstantiated. In this case, the applicant chose not to cite the source of information, SARS, as a party to these proceedings.

18.3 Furthermore, the panel believes that the NCR erred in concluding that the 20- day notification requirement in 19(4) does not apply to judgments. Regulation 19(8) mandates compliance with regulation 19(4) notification obligations concerning any adverse credit information being reported. The notification requirement applies to all sources of consumer credit information before submission to credit bureaus. Conversely, there is no such legal obligation on the respondent.

18.4 Section 70(2)(c) imposes a duty on credit bureaus to take reasonable steps to verify the accuracy of the consumer credit information reported to it. Section 72(1)(c)(ii) grants every person a right to challenge the accuracy of consumer credit information held by the credit bureau and to require that the challenged accuracy be investigated at no cost to the consumer.

18.5 According to section 72(5), a credit bureau may not report consumer credit information that is challenged until the challenge has been resolved in terms of section 72(3)(a), which requires the credit bureau to provide credible evidence to support the listing, or section 72(3)(b), which requires the credit bureau to remove the challenged consumer credit information in the absence of credible evidence.

18.6 The applicant challenged the listing on 8 July 2023. The respondent provided evidence to support the listing to the applicant on 10 July 2023. The respondent relied on the SARS judgment issued by the Limpopo High Court dated 7 December 2020. The applicant did not dispute that SARS obtained this judgment against him. There is no basis to suggest that the SARS judgment is not credible evidence for this listing as required under section 72(3)(a).

18.7 As the respondent's listing is undisputedly based on a valid judgment, the respondent is entitled to list this judgment in terms of section 70(3)(a). Further, section 70(2)(d) obliges the respondent to retain this judgment listing for five years unless rescinded, in which case the respondent will be required to expunge it in terms of section 71(6). The panel is satisfied that the respondent complied with section 70(2)(c).

18.8 The panel considered the applicant's emphasis that the respondent recorded the SARS judgment amount as R1 231,288.00 instead of R1 231,288.62, effectively understating it by 62 cents. According to him, this makes the listed information inaccurate and justifies removal. The respondent did not explain why the precise amount was not recorded as per the SARS judgment. The respondent's indifference to this discrepancy is of concern.

18.9 Notwithstanding, the 62-cent discrepancy appears to result from a rounding adjustment. This does not materially alter the SARS judgment or the applicant's credit obligation towards SARS. No proof of any alleged material prejudice to the applicant was submitted. Hence, the panel does not agree that the discrepancy misrepresents the applicant's credit status. The effect of the listing is the same, with or without the 62 cents. The Tribunal finds that the 62-cent discrepancy is *de minimis*.

18.10 In this regard, the panel applied the *de minimis non curat lex* principle, which provides that trivial matters do not warrant judicial or quasi-judicial intervention. In *Diageo SA (Pty) Ltd v Commissioner of the South African Revenue Service*,^[6] the court held that "The applicability of the rule in a particular case depends on all the circumstances thereof. It requires a value judgment, and in

determining the application of the *de minimis* principle, the judicial officer is charged with a policy decision to be exercised according to all the relevant circumstances of the case."^[7] The court concluded in paragraph 72 that "In casu, the law does not take account of an ABV which is so minute as not to be appreciable to exclude an ingredient from the ambit of 'non-alcoholic ingredient'".

19. The panel considered the applicant's submission that his version must be accepted in accordance with rule 13(5) in the absence of opposition or an answering affidavit from the respondent. This rule does not absolve the Tribunal of its responsibility to assess the case's merits independently. This assessment includes whether it has jurisdiction, whether the relief sought is legally sound, and whether the requirements of the NCA have been satisfied.

RELIEF SOUGHT

20. The panel considered the relief sought by the applicant. The panel does not believe the applicant is entitled to any of the requested remedies for the following reasons:

20.1 The Tribunal's role under section 141(1)(b) is to consider the complaint afresh as held in *Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd and Others*.^[8] It is not a review forum for the NCR notices of non-referral. Consequently, it cannot review or set aside the NCR's decision.

20.2 The Tribunal is only empowered to make an interim order within the provisions of section 149. No such application was made. As a creature of statute, the Tribunal cannot act outside its enabling statute, as confirmed in *National Credit Regulator v National Consumer Tribunal & Others*.^[9] Consequently, it cannot direct the temporary removal of the listing pending the finalisation of this matter.

20.3 Given the *de minimis non curat lex* principle, the permanent removal of the listing is unjustified. Such removal would be disproportionate and undermine the NCA's objectives.

CONCLUSION

21. Consequently, the panel concludes as follows:

21.1 There is no legal obligation for the respondent to notify the applicant or verify if SARS notified the applicant before listing the judgment.

21.2 The respondent took reasonable steps to ensure the accuracy of the consumer credit information listed, as evidenced by the undisputed SARS judgment issued by the Limpopo High Court and supporting documentation.

21.3 The 62-cent discrepancy is *de minimis*. As such, it does not warrant removing the listing from the applicant's credit record.

21.4 Consequently, the applicant is not entitled to the relief he seeks in this application.

ORDER

22. Accordingly, the panel makes the following order:

22.1 The respondent's application is dismissed, and

22.2 There is no order as to costs.

[Signed] Ms Z Ntuli

Presiding Tribunal member

Tribunal members Adv C Sassman and CJ Ntsoane concur.

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

[2] 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).

[3] 2003

(1) SACR 389 (E)

[4] 1969

(4) SA 191 (RA) 193A

[5] NCT/226906/2022/14l(l)(b)

[6] (A223/2021)

[2023] ZAGPPHC 508 (5 July 2023) at par [57].

[7] S v Visagie 2009

(2) SACR 70 (W) at par [15].

[8] (314/2020)

[2021] ZASCA 91; 2022 (1) SA 377(SCA) (25 June 2021).

[9] (707/2022)

[2023] ZASCA 133; [2024] 1 All SA 67 (SCA) (17 October 2023).

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