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IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO:78244/2016

Not reportable

Not of interest to other judges

Revised.

21/6/2017

In the matter between:

MALESELA DAVID MANAMELA  
(ID NO: ...)

Applicant

and

HEIN DU PLESSIS T/A DEBT SAFE

1<sup>st</sup> Respondent

TRUWORTHS (PTY) LIMITED

2<sup>nd</sup> Respondent

STANDARD BANK OF SA LIMITED

3<sup>rd</sup> Respondent

OLD MUTUAL LOANS

4<sup>th</sup> Respondent

NEDBANK LIMITED

5<sup>th</sup> Respondent

FNB, A DIVISION OF FIRSTRAND BANK LTD

6<sup>th</sup> Respondent

AFRICAN BANK LIMITED

7<sup>th</sup> Respondent

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JUDGMENT

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MBONGWE, AJ:

## INTRODUCTION

[1] This is an unopposed application for an order declaring the applicant to be no longer over-indebted. This application finds its origin in the provisions of the National Credit Act 34 of 2005 ("the Act") in terms of which persons who are over indebted may commence debt review proceedings through a debt counsellor in terms of section 86(1) of the Act for a review of their financial situation and ability to repay debts in accordance with their credit agreements. Where a consumer is found to be over indebted, section 86(7) of the Act requires that such status be confirmed by an order of a magistrate's court. Upon the debt counsellor's finding that a consumer is over indebted and prior to a magistrate's order confirming that status being obtained, the consumer's status gets registered thus adversely affecting his creditworthiness or ability to obtain credit.

## PREDICAMENT

[2] The predicament that arises, as in the present case, is a situation where the consumer, having been found to be over indebted and that fact registered against his name, but prior to a magistrate order being obtained, finds a second wind and becomes financially able to honour his repayment terms and, therefore, desires to have his registered financial status reversed. It appears that the Act did not envision this situation and, therefore, makes no provision for the withdrawal of the debt review process and the reversal of the adverse effects thereof on a consumer in the situation of the applicant.

[3] While the National Credit Regulator's Withdrawal from Debt Review Guidelines of 19 February 2015 provide for the withdrawal of the debt review process prior to a confirmation order of over indebtedness being made, the guidelines are by no means a supplement to or an amendment of the provisions of the Act. To this extent these guidelines seek that a consumer in the situation of the applicant terminates the debt review process by obtaining a court declaratory order that he is no longer over indebted.

## JURISDICTION

[4] As already stated, neither the Act nor the guidelines lends authority to the debt counsellor to reverse a commenced debt review process. This is evidenced by the court finding in *Rougier v Nedbank Ltd*, South Gauteng High Court case number 27333/2010 that a debt counsellor who sought to terminate a commenced debt review process had acted ultra vires. A magistrate's court, being a creature of a statute and operating within the confines of its creator, has no authority to grant the order envisaged in the guidelines (see *Minister of Safety and Security and Another v Bosman* 2010(2) SA 148 (C)).

[5] In line with the guidelines and using its inherent reservoir of power to regulate procedures in the interest of the proper administration of justice, this court has the necessary powers to grant relief in deserving circumstances ( see *Universal City Studios Inc v Network Video (Pty) Ltd* 1986 (2) All SA 192 at 754).

[6] Having perused the applicant's founding affidavit setting out the facts demonstrating its improved financial situation and ability to honour its contractual repayment terms and noting that none of the respondents, who are mainly the applicant's creditors, is opposing the application despite service thereof having been effected on them, I am satisfied that justice will not be served and that undue prejudice to the applicant will persist were the relief sought not be granted.

[7] I therefore make the following order:

1. The applicant is declared to be no longer over indebted.
2. No order as to costs.

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M MBONGWE, AJ  
Acting Judge of the High Court  
Pretoria