



national consumer tribunal

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IN THE NATIONAL CONSUMER TRIBUNAL, HELD IN PRETORIA

CASE No: NCT/253/2009/138(1) (P)

In the matter between

SINKI SUZAN LIPHOKO

Applicant/Consumer

(Represented by Martha Aletta Strydom a debt counsellor)

and

ABSA BANK

1st Respondent/Credit Provider

AFRICAN BANK

2nd Respondent/Credit Provider

ELLERINE HOLDINGS LIMITED

3rd Respondent/Credit Provider

EDCON (PTY) LTD (JET STORES)

4th Respondent/ Credit Provider

ORANGE CASH LOANS

5th Respondent / Credit Provider

JUDGMENT

1. INTRODUCTION

- 1.1 The Applicant is a consumer who applied for debt review in terms of the National Credit Act 34 of 2005 (the Act). The debt counsellor representing the debtor is

Martha Aletta Strydom. The Applicant is applying for a consent order in terms of section 86(8) read together with section 138 of the Act.

- 1.2** The debt counsellor found that the applicant was experiencing difficulty satisfying all obligations under her credit agreements in a timely manner.
- 1.3** The debt counsellor recommended a restructuring of the payment instalments to all credit providers, as per the agreement which is attached hereto marked "Annexure A".
- 1.4** All the respective credit providers (Respondents to this consent order) consented to this agreement.

2. APPLICATION FOR CONSENT ORDER

- 2.1** The Applicant applied for a consent order on 9 December 2009. The Tribunal expressed concern regarding the credit which had been granted to the Applicant. The debt counsel informed the Tribunal that she had requested the contracts from the various credit providers in order to assess the credit which had been granted but that the credit providers had failed to supply her with these agreements. The matter was adjourned in order for the Tribunal to subpoena the contracts and/or to subpoena the Respondents in order to enable the Tribunal to properly assess the credit which had been granted to the Applicant. In particular the Tribunal was concerned to establish whether

- (1) the Applicant was over-indebted and
- (2) whether any of the respondents had granted credit to the Applicant recklessly.

2.2 The matter commenced again on 7 April 2010. The Tribunal had been provided with two contracts regarding credit which had been granted to the Applicant by African Bank. A representative from Absa Bank and a representative from Orange Cash Loan appeared before the Tribunal.

2.3 The Representative from Orange Cash Loan (Orange) informed the Tribunal that he has been doing business since 2005. He had made a number of short term loans to the Applicant over the years which the Applicant had always been able to pay back. On each occasion he did an assessment of the Applicant's financial position and on each occasion he granted the Applicant a loan which never exceeded 60% of her disposable income taking into consideration her debts on the date on which the Applicant applied for the loan. He never gave the Applicant more than R1 200 as this was the maximum which in his opinion she would be able to repay. In most instances the loans were less than this. The last loan which he granted to the Applicant was on 5 June 2009. This loan was for R700. The Applicant was due to repay R833.55 on 26 June 2009. This amount included certain fees as well as interest at a rate of 5% per month (the acceptable interest rate for small loans. Small loans as per Regulation 39 read with Regulation 42 part C of the Act are loans that do not exceed R8 000 which are repayable within 6 months). This should have been paid via a debit order on the Applicant's bank account. The debit order was however returned due to insufficient funds. The Applicant did not inform the credit grantor that she had outstanding loans with African Bank. Orange informed the Tribunal that in his experience, consumers did not disclose the full extent of their loans and he took this into consideration when granting loans. This was the reason why he never granted a loan which exceeded 60% of a debtor's disposable income. It was also difficult to establish whether there were other loans from other credit providers as information is not always kept up to date or forthcoming. Orange stated that had he been aware of the loans from African Bank he would not have granted the Applicant a further loan.

3. CONSIDERATION OF THE AFRICAN BANK CONTRACTS.

3.1 On 3 September 2007 African Bank gave the Applicant a loan of R11 500. The contract regarding this loan is attached and is marked "Annexure B". An Absa Bank statement from 1 June 2007 to 3 September 2007 which refers to the Applicant's bank account is attached to this contract. A consideration of this statement indicates that on numerous occasions the Applicant's debt orders were returned due to insufficient funds. See 28 June 2007, 29 June 2007, 26 July 2007, 31 August 2007. Also attached to the contract is a document headed "Income and Expense Declaration". The document establishes that at the time the Applicant earned a net salary of R2 196.29. This document establishes that the Applicant was asked numerous questions which were designed to establish her financial position. In answer to the question monthly expenses -clothing the Applicant simply states "buy with account". However, there is no indication of how many accounts and how much is owed. The Absa Bank employee who dealt with this loan was Poppy Ntshingila.

3.2 The Applicant again applied for a loan from Absa Bank on 5 June 2008. On this occasion the Applicant was granted a loan of R6 750. 00. The contract is attached marked "Annexure C". The Absa Bank employee who dealt with this loan was again Poppy Ntshingila. The Applicant was again asked a series of questions regarding her financial position but in this contract the answers are different to those given when she was granted a loan in 2007. In addition, there is no reference in this document to the 2007 loan. Again an Absa Bank statement is attached (from 30 May 2008 to 5 June 2008) and this again indicates that debit orders were returned due to insufficient funds. The Applicant is asked about her clothing payments and she replies "buy on account". There is no indication of how many accounts and how much the Applicant owes on these accounts.

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD AT CENTURION

CASE NO.

In the matter between:

Sinki Suzan Liphoko

Applicant/Consumer

Identity number:

and

Absa Bank Limited

1st Respondent/Credit Provider

African Bank Limited

2nd Respondent/Credit Provider

Ellerine Holdings Limited

3rd Respondent/Credit Provider

(Furn City)

Edcon (Pty) Ltd

4th Respondent/Credit Provider

(Jet Store Account)

Orange Cash Loan

5th Respondent/Credit Provider

**DRAFT CONSENT ORDER IN TERMS OF SECTION 86(8) READ TOGETHER
WITH SECTION 138 OF THE NATIONAL CREDIT ACT 34 OF 2005**

WHEREAS:

- 6
- a. The consumer applied for debt review in terms of the National Credit Act 34 of 2005;
 - b. The debt counsellor found that the consumer is experiencing difficulty satisfying all obligations under the credit agreements in a timely manner;
 - c. The debt counsellor recommended a restructuring of the payment installments to all the credit providers, as per the agreement which is attached hereto marked: "Annexure B";
 - d. All the respective credit providers and the consumer/applicant consented to this agreement, which consents are hereto attached marked "Annexure C"

NOW THEREFORE:

The Tribunal, being satisfied that the Applicant and Respondent are parties to a debt rearrangement facilitated by a debt counsellor under section 86(7) of the National Credit Act, hereby orders, by consent of the parties:

1. That the payment structures of the agreement between the Applicant and the respondents as set out in Annexure "B", be made an order of the National Consumer Tribunal;
2. Which agreement restructures the payment installment by extending the payment period as indicated in Annexure "B"

3. Edcon (Pty) Ltd
Edgardale Press Avenue
Crown Mines
2025

4. Ellering Holdings Limited
38 Elston Street
Benoni
1500

5. Orange Cash Loan
2G Wandellaan
Sasolburg
1947