

**IN THE NATIONAL CONSUMER TRIBUNAL  
HELD AT CENTURION**

Case No: NCT/29241/2015/141(1) (NCA)

In the matter between:

**N Mambo**

**APPLICANT**

and

**African Bank**

**RESPONDENT**

**Coram:**

Ms H Devraj	-	Presiding member
Prof T Woker	-	Member
Mr X May	-	Member

Date of hearing: 05 May 2016

---

**JUDGMENT AND REASONS**

---

1. The Applicant is Mr N Mambo, (hereinafter referred to as "the Applicant"). The Applicant represented himself at the hearing.
2. The Respondent is African Bank. The Respondent is a credit provider registered with the Regulator. AG Sawma (SC) briefed by TWB Attorneys, represented the Respondent at the hearing (hereinafter referred to as "the Respondent").

**BACKGROUND**

3. The Applicant brought this application in terms of section 141(1) of the of the National Credit Act, Act 34 of 2005 ("the Act" or "the NCA") to the National Consumer Tribunal ("the Tribunal" or "the NCT") .
4. This is a referral by a complainant after receiving a notice of non-referral from the National Credit Regulator.

**POSTPONEMENT RULING AND CONDONATION RULING AT HEARING OF 11 MARCH 2016**

5. The matter was set down on 11 March 2016 on a default basis.
6. The Respondent (in the main matter) filed a postponement application and a condonation application for the extension of time for the filing of its answering affidavit on 29 February 2016.
7. The Applicant (in the main matter), filed an affidavit, opposing the application for postponement as well as the condonation application to extend the time for the filing of the answering affidavit on 02 March 2016.
8. At the hearing, the Respondent ( in the main matter), submitted the following key issues that have been summarised:-
  - 8.1 On 03 August 2014, it received the application for the referral from the Applicant (in the main matter) via registered post and via e-mail. The application was transmitted to numerous employees of the Respondent (in the main matter) via e-mail.
  - 8.2 The Respondent (in the main matter) communicated with the Tribunal regarding the status of the matter and they were informed that no case number had been issued as yet.
  - 8.3 It is not disputed that additional documentation that was filed by the Applicant (in the main matter), was delivered to the Respondent (in the main matter). However, the Respondent

---

(in the main matter) alleges that the documentation did not come to the attention of the Group Legal Department.

- 8.4 That the notice of complete filing as transmitted by the Registrar was sent to the e-mail address [rla@africanbank.co.za](mailto:rla@africanbank.co.za), but this was not brought to the attention of the Respondent's (in the main matter) Group Legal Department.
- 8.5 That on 19 February 2016, the Respondent (in the main matter), received a copy of the notice of set down for 11 March 2016, which was delivered to the Respondent (in the main matter) by way of courier.
- 8.6 That this resulted in urgent communication between the Respondent (in the main matter) with the Tribunal with regard to the notices that were issued, the application in this matter as well as correspondence that was issued to the Respondent (in the main matter). Of which this information was forwarded by the Tribunal to the Respondent (in the main matter).
- 8.7 That this resulted in the filing of papers for a postponement as well as condonation application to extend the time of the filing of the answering affidavit.
- 8.8 The Respondent (in the main matter) further submitted that in terms of prospects of success, it enjoys significant prospects of success, should it be given the opportunity to put forward its case and ventilate the issues fully.
- 8.9 The Respondent (in the main matter) raised that refusing the postponement application and condonation application would be prejudicial not only to the Respondent (in the main matter) but also to the administration of justice.
9. The Applicant (in the main matter) made the following submissions summarised as follows:-
- 9.1 The Applicant (in the main matter) disputed that that the Respondent (in the main matter) had not received the application documentation as were served by the Applicant (in the main matter) as well as the notices from the Tribunal.

- 9.2 The Applicant (in the main matter) raised that there would be prejudice suffered as this will create a delay in finalising the matter.
- 9.3 The Applicant (in the main matter) was of the view that the reasons advanced by the Respondent (in the main matter), were frivolous and vexatious.
10. After further consideration by the parties in this matter and trying to ensure that this matter gets dealt with as expeditiously as possible, both the Applicant (in the main matter) as well as the Respondent (in the main matter) , agreed to the postponement as well as the condonation of the extension of time for the filing of the answering affidavit and the filing of the supplementary affidavit that was put forward by the Respondent (in the main matter).

#### **FINDING ON THE POSTPONEMENT APPLICATION AND CONDONATION APPLICATION**

11. In accordance with the principles outlined in *Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others*<sup>1</sup> the Tribunal considered the interests of justice as a whole and the relevant factors in this regard. After considering the points canvassed by both parties on the postponement application as well as the condonation application, the Tribunal was of the view that this was an important matter for both parties and in the interests of administrative justice and fairness, it was important that both parties be given an opportunity to fully ventilate the issues in this matter.
12. The following order was made ex-tempore at the hearing :-
  - 12.1 The postponement was granted;
  - 12.2 The condonation application for the extension of time for the filing of the answering affidavit was granted;

---

<sup>1</sup> 2003 (11) BCLR 1212 (CC) at para[11]

12.3 The Respondent (in the main matter) must file its answering affidavit within 15 business days from the date of this hearing that is 04 April 2016. The Applicant (in the main matter) will therefore have 10 business days from this date to file the replying affidavit, that is 18 April 2016. The matter will be set down for a hearing on 05 May 2016.

12.4 The condonation for the filing of the supplementary papers submitted by the Respondent in relation to its postponement application and condonation application was granted.

## HEARING 05 MAY 2016

### RESPONDENT'S POINTS IN LIMINE

13. The Respondent (in the main matter) raised a *point in limine* on its answering affidavit as well as at the hearing. The Tribunal decided to determine and pronounce on the points *in limine* before engaging into the leave to refer or the merits of the main application, due to the serious nature of the point that was raised.

14. The Respondent submitted *in limine* the following:

14.1 On 22 August 2014 and by way of Government Notice 671, published in the Government No.37915, the Registrar of Banks gazetted that the Respondent has been placed under curatorship.

14.2 In terms of Section 69(6)(a) of the Banks Act, Act No. 94 of 1990, for so long as the bank is under curatorship, all legal proceedings, actions, executions of writs, summonses and all under a legal process against a bank, is stayed and may not be instituted or proceeded with, absent the leave of the Court.

14.3 Further, in conformity of the provisions of Section 69(6) of the Banks Act, paragraph 4.6 of the Gazette provides that :

*"Whilst ABL is under curatorship, all actions, legal proceedings, the execution of all writs, summonses and other legal proceedings against the bank shall be stayed and shall not be instituted or proceeded with without the leave of the Court."*

- 14.4 The Respondent went on further to address the Tribunal on why it believes that the Tribunal is not a court. The Respondent referred to Section 1 of the Act which defines the National Consumer Tribunal as being established in terms of Section 26 of the Act and that the National Consumer Tribunal is not referred to or defined as a Court and that the Act makes draws a distinction between matters that can be considered by the Tribunal and that which can be determined by a Court.

#### **APPLICANT'S RESPONSE TO RESPONDENT'S POINTS IN LIMINE**

- 15.1 The Applicant submitted that he was not aware of this and that he therefore has not obtained any leave from a Court for the matter to be considered by the Tribunal.
- 15.2 The Applicant further advanced that this does prejudice him in having the matter resolved.

#### **FINDING**

16. There is evidence before the Tribunal, that the issue raised on the Respondent being under curatorship has been published in the Government Gazette No. 37915. The Gazette is explicit in that legal proceedings against the bank shall be stayed and shall not be instituted or proceeded with without the leave of the Court.
17. The National Consumer Tribunal is a creature of statute and derives its powers from the National Credit Act and Consumer Protection Act, respectively. The Tribunal therefore does not have jurisdiction to proceed further with the leave to refer or to go into the merits of this matter, without the leave of a Court.
18. However, should the Applicant obtain leave from the Court to proceed and institute proceedings

against the Respondent , then the Applicant can file a new application with the Tribunal.

## ORDER OF THE TRIBUNAL

19. The Tribunal accordingly makes the following order:

- a. The point *is limine* is upheld and the Applicant's application is therefore dismissed
- b. No order is made as to costs

Dated this 12<sup>th</sup> day of May 2016

**Ms H Devraj**  
**Presiding Member**

Prof T Woker (Member), Mr X May (Member) concurring

Authorised for issue by the National Consumer Tribunal

Case number NCT/29241/2015/141(1)

Date 2016 / 05 / 17  
Ccyy mm dd

National Consumer Tribunal  
Ground Floor Building B  
Lakeland Office Park  
272 West Avenue Centurion 0157

