

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

Case Number: NCT/129993/2019/59(1)

In the matter between:

BONGANI MNWEBA

APPLICANT

and

NATIONAL CREDIT REGULATOR

RESPONDENT

Coram:

Dr L. Best Presiding Tribunal Member

Mr T. Bailey Tribunal Member

Ms P. Beck Tribunal Member

Date of Hearing: 21 November 2019

JUDGMENT AND REASONS

APPLICANT

1. The Applicant in this matter is Bongani Mnweba, a major male (hereinafter referred to as "Mr Mnweba" or "the Applicant").

RESPONDENT

2. The Respondent is the National Credit Regulator (hereinafter referred to as "the Respondent" or "the NCR"). The NCR is a regulatory institution created by

section 12 of the National Credit Act 34 of 2005 ("the NCA".)

TYPE OF APPLICATION

3. On 3 April 2019, Mr Mnweba filed an application with the National Consumer Tribunal ("the NCT") in terms of section 59(1) of the NCA¹ for the NCT to review a decision of the NCR.
4. In the founding papers, the Applicant sought the following orders:-
 - 4.1 To declare that the instruction given by the NCR to the Payment Distribution Agent (PDA), DC Partners, was unlawful;
 - 4.2 To order the NCR to pay R10 024 100.00 in damages to Mr Mnweba; and
 - 4.3 To direct that the NCR reinstate his registration as a debt counsellor as from September 2014.

HEARING

5. The NCT convened a hearing into the matter on 21 November 2019.
6. Mr Sono, from the Black Debt Counsellors Organization, represented the Applicant.
7. Ms Schwartz, a legal official, employed by the NCR, represented the Respondent.

¹ 59. Review or appeal of decisions.- (1) A person affected by a decision of the National Credit Regulator under this Chapter may apply to the Tribunal to review that decision, and the Tribunal may make an order confirming or setting aside the decision in whole or in part. An order contemplated in subsection (1) may include an order setting aside any condition attached to a registration if the Tribunal is not satisfied that the condition is reasonable and justifiable, having regard to the objects and purposes of this Act, the circumstances of the application or review, as the case may be, and the provisions of section 48. A decision by the Tribunal in terms of this section is subject to appeal to, or review by, the High Court to the extent permitted by section 148.

BRIEF BACKGROUND

8. Mr Mnweba was registered as a debt counsellor on 7 October 2010 with registration number NCRDC 1894. He engaged in the practice of a debt counsellor and his debt review clients paid their monthly contributions through a Payment Distribution Agent [PDA] called DC Partners. Mr Mnweba received his monthly after-care fees from DC Partners.
9. Mr Mnweba's last payment to the Respondent towards his annual renewal fees was on 17 October 2012.
10. During August 2014, Mr Mnweba received an email from the NCR; informing him of a complaint lodged against him by a client.
11. During October 2014, he did not receive his usual fees from DC Partners. DC partners informed him that the NCR had instructed it not to make any payments to him, due to him not co-operating with the NCR. He did not receive any response to his queries to DC Partners and the NCR.
12. On 7 November 2014, the Respondent authorised an investigation into the conduct of the Applicant, due to a complaint received on 2 February 2014. The Respondent informed the Applicant about the complaint by email during August 2014. The Applicant did not respond.
13. The Respondent was unable to conduct the investigation due to the inability to locate the Applicant at the address provided to the Respondent, in the Applicant's application for registration as a debt counsellor
14. During December 2015, the Applicant started making further inquiries regarding the funds withheld by the PDA in October 2014; but did not receive a response. Mr Mnweba then became severely depressed and required medical attention and assistance.

15. During January 2017, the Applicant again started engaging with the NCR.
16. On 6 February 2017, the Respondent issued a letter to the Applicant and requested a meeting. The Applicant failed to provide a suitable date to meet. He also failed to submit the requisite proof of payment of outstanding annual renewal fees.
17. On 16 February and again on 6 March 2017, the Applicant and the Respondent met. The Applicant was unco-operative, and he refused to continue to answer questions. As a result, the Respondent was unable to complete its re-instituted investigation into the business affairs of the Applicant. The investigation by now included additional complaints received from consumers, who reported that fees paid to the Applicant, were not utilised for consumer debt settlement purposes.
18. The Applicant received a notice from the NCR dated 15 May 2017. The Notice stated that his registration as a debt counsellor had lapsed. The Notice does not state from when the lapsing took effect.
19. All consumers under the Applicant's profile were transferred to a new debt counsellor, in terms of an agreement concluded between said debt counsellor and the Respondent on 4 July 2017. All suspended fees were released to the new debt counsellor to assist the transferred consumers.
20. During 2018, the Applicant had further engagements with the NCR, but there was no progress on the issue.
21. In April 2019, Mr Mnweba filed an application to condone the late filing of the main application, which was duly granted.
22. The condonation judgment noted that *"Mr Mnweba's claim for damages is not provided for in section 59 of the NCA. The Tribunal does not have any powers to award damages."* Mr Mnweba subsequently abandoned this order at the hearing of the main matter.
23. To date, the Applicant has not responded to the consumer complaints raised

against him; neither has he proved that he paid his annual renewal fees.

RESPONDENT'S OPPOSITION TO THE APPLICANT'S RELIEF

24. The Respondent submits that the Applicant's omission to make timely payment of the annual renewal fees since October 2012; is in contravention of Section 52(5) (d) of the NCA, and such conduct has consequently caused his registration as a debt counsellor to lapse.
25. The lapsing of the Applicant's registration was occasioned by the operation of law in terms of Section 52(4) (b) (iii) of the NCA and not by any action or decision by the Respondent.
26. In this regard, the Respondent references *Samuels vs the National Credit Regulator* NCT/91811/2017/59(1), which found that:

"the Tribunal accepts the NCR's assertion that the registration of the Applicant lapsed by operation of law regulating the affairs of the debt counsellor, the National Credit Act. The decision to inform the Applicant about the lapsing of his registration is not an administrative one but is occasioned by the application of specific provisions of the NCA, regulating the registration of registrants. The NCR cannot escape the invocation of these provisions even if its administrative process could be found to be lacking in determining whether or not the registrant's fees are in order".

And further that:

"The Applicant has the obligation to ensure that his registration fees are paid annually when they become owing, due and payable. He has the responsibility as a registrant, to install systems within his establishment as Debt Counsellor that would assist him to keep track of his obligations requiring compliance with the NCA and the conditions of his registration as a Debt Counsellor. The onus rests with the Applicant to ensure

the observance of laws regulating his trade or profession. The Regulator is under no obligation to remind the registrants to renew their Annual Registration Renewal Fees.”

27. The Respondent further relies on NCR vs Lightning Cash Loans CC NCT/7281/2013/57(1)NCA. In this judgment, the Tribunal refused the NCR’s application for deregistration of the Respondent, on the basis that Lightning Cash Loans CC’s registration, by the operation of law, had already lapsed by virtue of the Respondent’s non-payment of the annual renewal fees.
28. The Respondent submits that the relief sought by the Applicant cannot be claimed in terms of section 59(1) as there is, as referenced by the case law, no disputed decision, under Chapter 3 of the NCA, which was taken by the Respondent. Since the occurrence of the deregistration cannot be deemed to be a decision, any further actions taken by the Respondent there-after are mere practical steps to give effect to the deregistration.

ISSUES TO BE DECIDED

29. The issues that the NCT has to decide are:
 - 29.1 whether the lapsing of the Applicant’s registration as a debt counsellor is a decision by the Respondent; and
 - 29.2 whether the Respondent’s notice to DC Partners to cease further payments to the Applicant constitutes a decision by the NCR; and if so, is this decision reviewable under Chapter 3 of the NCA.

APPLICABLE SECTIONS OF THE ACT

When considering this matter, the applicable sections of the NCA are as follows:

Section 51(1) (c) of the NCA provides that:

"The Minister may prescribe an annual registration renewal fee to be paid by the registrants."

The Minister accordingly prescribed the annual renewal fees and timeframes for paying the fees in the Regulation published under GN R9494 in Government Gazette 29245 on the 21 of September 2006.

Section 52(4) (a) and (b) of the NCA provide that:

"A registration takes effect on the date on which the certificate or duplicate certificate of registration is issued, and subject to timely payment of the prescribed registration renewal fees, remains in effect until the registrant is deregistered; the registration is cancelled in terms of this Act; or it has lapsed on the last day upon which the prescribed renewal fee should have been paid in terms of section 51(1)(c)".

Section 52(5) (d) further provides that a registrant must "pay the prescribed annual renewal fees within the prescribed time".

30. Section 59 deals with the *Review or appeal of decisions*, and 59 (1) provides that *"a person affected by a decision of the National Credit Regulator under this Chapter may apply to the Tribunal to review that decision, and the Tribunal may make an order confirming or setting aside the decision in whole or in part"*.

CONSIDERATION OF THE MERITS

31. The official records of the NCR show that the Applicant has not paid his annual registration renewal fees since 2012. The Applicant has to date been unable to provide any proof of payment to counter this version and did not dispute the Respondent's assertion in this regard during the hearing.
32. Accordingly, in terms of section 52(4)(d), the Applicant's registration has lapsed; and indeed, the Applicant should thus not have been performing any functions as a debt counsellor beyond this date.

33. The case law is clear that registration of a debt counsellor lapses by operation of the law regulating the affairs of debt counsellors. The lapsing of the Applicant's registration was occasioned by the operation of law in terms of Section 52(4) (b) (iii) of the NCA; and not by any action or decision by the Respondent. The NCR, as the regulatory body, cannot escape the invocation of these provisions.
34. It follows; then; that the Respondent's notice to DC Partners to cease further payments to the Applicant is an administrative consequence arising from the Applicant's lapsing of registration as a debt counsellor. This administrative action does not constitute a decision, and Section 59 of the NCA cannot be invoked.

CONCLUSION

35. Having considered the application of the NCA, and further guided by the case law that, the NCT concludes that:
- 35.1 the lapsing of the Applicant's registration as a debt counsellor is by operation of the law, and is not a decision by the Respondent; and
- 35.2 the Respondent's notice to DC Partners to cease further payments to the Applicant is an administrative consequence of the lapsing of the Applicant's registration, and does not constitute a decision by the NCR, and is therefore not reviewable under Chapter 3 of the NCA.

ORDER

36. In the result and for the reasons canvassed above, the Tribunal makes the following order:
- (a) The application to review a decision of the NCR (the Regulator), is dismissed;
- (b) The Applicant's registration as Debt Counsellor has, in terms of section 52(4) of the NCA, lapsed;

(c) The Applicant is directed not to engage in any activities of a Debt Counsellor;
and

(d) There is no order as to costs.

SIGNED AND DATED ON THIS 30th DAY OF NOVEMBER 2019.

DR L BEST

PRESIDING MEMBER

Authorised for issue by National Consumer Tribunal

Case Number: NCT-129993-2019-59(1)

Date: 04-12-2019

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With Mr T Bailey (Tribunal Member) and Ms P. Beck (Tribunal Member) concurring.