

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

Case No: **NCT/333308/2024/141(1)(b)**

In the matter between:

**MDUDUZI PATRICK KUNENE**

**APPLICANT**

and

**WASEEMAH ISAACS  
NATIONAL CREDIT REGULATOR**

**FIRST RESPONDENT  
SECOND RESPONDENT**

Coram:

Mr S Hockey	- Presiding Tribunal member
Adv C Sassman	- Tribunal member
Ms Z Ntuli	- Tribunal member

Date of the hearing:	- 7 February 2025
Further documentation received	- 12 February 2025
Date of judgment:	- 14 February 2025

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**JUDGMENT AND REASONS**

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**THE PARTIES**

1. The applicant is Mduduzi Patrick Kunene (the applicant), a consumer as defined in section 1 of the National Credit Act, 34 of 2005 (the NCA). The applicant represented himself at the hearing of this matter.

2. The first respondent is Washeemah Isaacs (the first respondent), a debt counsellor registered as such with the second respondent under registration number NCRDC3989. The first respondent practices as a debt counsellor under the name and style of My Debt Assistant (MDA).
3. The second respondent is the National Credit Regulator (the second respondent), a state organ and a juristic person established in terms of section 12 of the NCA to regulate the consumer credit market and ensure compliance with the NCA.
4. Neither respondent opposed this application, nor were they represented at the hearing.

## **TERMINOLOGY**

5. A reference to a section in this judgment refers to a section of the NCA.
6. A reference to a regulation refers to the National Credit Regulations, 2006.<sup>1</sup>
7. A reference to a rule in this judgment refers to the Rules of the Tribunal<sup>2</sup> (the rules).

## **APPLICATION TYPE AND JURISDICTION**

8. The applicant previously referred his complaint to the second respondent, who, after an assessment thereof, concluded on 30 May 2024 that the redress sought by the applicant could not be provided in terms of the NCA.
9. Thereafter, the applicant referred this matter to the National Consumer Tribunal (the Tribunal) in terms of section 141(1)(b). This section provides that if the second respondent issued a notice of non-referral as it did in the present matter, the complainant may refer the matter directly to the Tribunal, with leave of the Tribunal. The Tribunal granted such leave on 12 November 2024.

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<sup>1</sup> Published under GN R489 in GG28864 of 31 May 2006.

<sup>2</sup> Published under GN 789 in GG 30225 on 28 August 2007 as amended by GN 428 in GG 34405 on 29 June 2011, GN R203 in GG 38557 on 13 March 2015, and GN 157 in GG 39663 on 4 February 2016.

10. Accordingly, the Tribunal has jurisdiction in terms of sections 141(1)(b) and 27(a)(ii)<sup>3</sup> to consider this matter.

### **CONSIDERING THIS MATTER ON AN UNOPPOSED BASIS**

11. In terms of rule 30, a document may be served on a party by delivering it or by sending it by registered mail to the party's last known address.
12. The applicant sent this application to the first respondent by registered mail on 31 August 2024. On 13 September 2025, the registered mail reached the post office that services the area where the first respondent conducts her business. On the same day, the post office notified the first respondent that the registered mail was available for her collection.<sup>4</sup>
13. The Tribunal is therefore satisfied that proper service was effected on the first respondent.
14. In terms of rules 13(1) and (2), a respondent to an application or referral to the Tribunal may oppose the matter by filing an answering affidavit within 15 business days of receipt of the application or referral.
15. The first respondent failed to file an answering affidavit within the prescribed period or at all, and the matter was accordingly set down for hearing on an unopposed basis.
16. In terms of rule 13(5), any fact or allegation in an application or referral not specifically denied or admitted in an answering affidavit will be deemed to be admitted. Since only the applicant's version is on record, all the facts and allegations he has made must be deemed to have been admitted.

### **THE APPLICANT'S CASE**

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<sup>3</sup> This section provides that the Tribunal or a member of the Tribunal acting alone in accordance with the NCA or the CPA may adjudicate in relation to any allegations of prohibited conduct.

<sup>4</sup> See page 84 of the hearing record.

17. According to the applicant, the first respondent placed him under debt review without his consent. Thereafter, he was not contacted to inform him of this, nor were any payment arrangements made by the debt counsellor. Instead, he paid his creditors himself and has since then settled some of his debts.
18. The applicant became aware that he had been placed under debt review on 1 May 2024.
19. The letter of non-referral from the second respondent shows that the applicant was placed under debt review on 17 February 2020. A personal credit report attached to the application confirms that the applicant was placed under debt review on 17 February 2020<sup>5</sup>. The applicant states that he was never contacted about this. He checked his emails from 2019 and found no record of an email from the first respondent. The applicant also denies signing Form 16, which seems to bear a signature resembling his.
20. The applicant further states that after he found out that he was placed under debt review, he contacted MDA to cancel his debt review, but was told it could not be cancelled and that he first had to send them paid-up letters.
21. The applicant also attached to his application Form 17.Wb, dated 24 May 2024, from the respondent, in which she suspended her services to the applicant “due to non-cooperation by the Consumer [applicant].” The form indicates that she remains the debt counsellor on record.

## **DISCUSSION**

22. The applicant wants to be removed from debt review by having his name removed from the Debt Help System (DHS), which the second respondent manages and controls, as borne out by the relief he seeks in his referral form. The DHS records information about consumers who have applied for debt review and indicates the different stages of the debt review process.

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<sup>5</sup> See page 37 of the record.

23. Concerned that the first respondent may have neglected her duties by not attending to the applicant's debt review process after he had been placed under debt review and his name had been entered on the DHS, the Tribunal subpoenaed the first respondent's conditions of registration<sup>6</sup> from the second respondent. On receipt of the conditions of registration, the Tribunal noticed that it was dated 10 May 2022. It is safe to assume that this is the date that the second respondent registered the first respondent as a debt counsellor.
24. The Form 16 notice, which is part of the record and the precursor to the applicant's name being placed on the DHS, does not contain the name of the debt counsellor who issued it but does contain a debt counsellor registration number, namely NCRDC 2693. Evidently, and purely from the evidence at the disposal of the Tribunal, this is not the first respondent's registration number.
25. Under these circumstances, the Tribunal is of the view that it would be improper to order any sanctions on the first respondent. The applicant, after all, does not seek the first respondent to be sanctioned.
26. The ineluctable conclusion that must be drawn from the available evidence is that the applicant was placed under debt review without his knowledge and consent, which impacts his credit status. In terms of section 60, every natural person, juristic person, or association of persons has a right to apply for credit. Section 61 affords consumers protection against discrimination in respect of credit, including when assessing the ability of a consumer to meet the obligations of a proposed credit agreement.
27. Section 150(i) empowers the Tribunal to make any other appropriate order (in addition to the orders in section 150(a) to (h)) required to give effect to a right, as contemplated in the NCA or the Consumer Protection Act, 2008. The unlawful placement of the applicant under debt review and his listing on the DHS infringes on his rights as a consumer in the credit market, especially in relation to his rights under sections 60 and 61. In these circumstances, the Tribunal is of the view that

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<sup>6</sup> In terms of section 48, the NCR may impose conditions of registration on an applicant for registration as a debt counsellor. Such conditions are invariably imposed on all debt counsellors upon their registration as such.

it would be appropriate to order that the applicant's name be removed from the DHS by the second respondent and for the latter to inform all credit bureaus accordingly, thereby giving effect to the applicant's rights under the aforesaid provisions.

## **THE ORDER**

28. In the result, the following order is made:

28.1. The second respondent is ordered to, within seven business days of the issuing of this judgment, remove the applicant's debt review status from its Debt Help System and inform all registered credit bureaus of the removal.

28.2. There is no order as to costs.

[Signed]

S Hockey

(Presiding Tribunal member)

Tribunal members Adv C Sassman and Ms Z Ntuli concur.

**Authorised for issue by The National Consumer Tribunal**

**National Consumer Tribunal**

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