

In the matter between:

SA TAXI SECURITISATION (PTY) LTD

Appellant

and

DICK LENNARD

Respondent

SUMMARY OF JUDGMENT HANDED DOWN ON 21 OCTOBER 2010 (Interest)

The Respondent in this matter applied to be declared over-indebted. The application was accepted by a registered debt counsellor, a Mr Strydom, and all usual steps were followed. The application was then opposed by the Appellant. The objections, relating to the lack of *locus standi* and proper service of papers on the Appellant, were both considered by the Magistrate to be without any merit. Accordingly, the Magistrate declared the Respondent to be over-indebted and ordered the Respondent's obligations to be re-arranged in the manner recommended by Strydom.

After receipt of the Magistrate's written reasons, the Appellant lodged an appeal against the order to the Grahamstown High Court. The grounds for the appeal were that the Magistrate of the *court a quo* had erred in finding that the two objections raised were without merit. At the hearing of the matter, counsel for the Appellant placed more emphasis on the first ground; namely that in terms of Section 86(7)(c) the relevant debt counsellor must be cited as the Applicant as opposed to the consumer. In addition, he submitted that the Magistrate had acted *ultra vires* by ordering not only that the amount of each monthly payment due by the Respondent be reduced, but also that the interest rate payable by the Respondent in terms of the credit agreement be reduced from 25% to 15.5%.

D. Van Zyl J's reasoning in this regard went as follows:

In terms of Section 87(1), the Magistrate's Court does not have the power to make any order other than those listed in paragraphs (a) and (b). If a consumer is found to be over-indebted as determined by the debt counsellor, and a recommendation that the consumer's debts be rearranged is appropriate in the circumstances, the said court is empowered to make one or more of the orders contemplated in Section 86(7)(c)(ii). In this matter, Strydom recommended that the Respondent's obligations be rearranged by '**extending the period of the agreement and reducing the amount of each payment due** [Section 86(7)(c)(ii)(aa)]'. However, it was clear from Strydom's proposal and calculations that he achieved a reduction in the payments by reducing the interest rate fixed in terms of the agreement, instead of reducing the amount of each payment due each month by spreading the payment over an extended period, as envisaged by sub-paragraph (aa). Consequently, by ordering that the Respondent's obligations be rearranged, the Magistrate effectively ordered not only that the monthly payments be reduced, but also that the interest rate be reduced to 15.5%.

D Van Zyl J agreed with the Respondent's submission that in doing so the Magistrate acted outside the scope of his powers, and that Section 86(7)(c)(ii)(aa) accordingly does not allow the Magistrates' Court to reduce the interest rate applicable to an agreement in order to provide debt relief to a consumer. In addition, it follows that as the debt counsellor's scope for making a proposal in terms of Section 86(6)(c) is inextricably linked to the powers of the Magistrates' Court in Section 87 of the Act, he/she cannot recommend what the said court is not empowered to order.

It was held that the Magistrate in the present matter acted *ultra vires*, that the order should be set aside, that the matter be remitted to the Magistrate to consider, to among other things, allow Strydom to make further recommendations with regard to the Respondent's obligations in terms of the credit agreement.

The appeal was upheld, and the order granted by the Magistrate was set aside.

