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**Case No: NCT/658/2010/149 (1)(P)**

In the matter between

**JOHANNES HENDRIK HERWEL**

**APPLICANT**

and

**SA TAXI SECURITISATION SERVICES**

**RESPONDENT**

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**RULING**

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**Introduction**

1. The Applicant is Mr Johannes Hendrik Herwel (Herwel), a consumer, formerly of 69 Jason Crescent, Woodlands, Mitchelsplain and currently resident at 29 Pearlway, Coleridgeview, Oudshoorn.
2. The Respondent is SA Taxi Securitisation Services (SATS) of 230 Jan Smuts Avenue, Dunkeld West, Johannesburg.

### **Background**

3. On or about 15 July 2008, the applicant entered into a written agreement of lease with the respondent to lease a 2008 Toyota Quantum Sesfikile, engine number 2TR8113738 and chassis number JTFSX22PX06032937.
4. The applicant fell into arrears with his payments on the vehicle and approached a debt counselor, Mr Sarel Fick (Fick) of Protokol Debt Counselling, Oudshoorn, for a determination to have the applicant declared over-indebted in terms of section 86(1) of the Act.
5. On 22 January 2010, Fick delivered, to the respondent, a notice contemplated in section 86(4)(b)(i) informing all registered credit providers that the applicant applied for debt review.
6. On 4 February 2010, the respondent received notice from Fick proposing a debt re-arrangement of the applicant's obligations to the respondent.
7. On 19 February 2010 Fick furnished a proposal for debt re-arrangement to the respondent which was rejected by the respondent.
8. On 24 February 2010 the respondent made a counterproposal to the applicant which was rejected by the applicant.
9. On 14 May 2010 the respondent gave notice to the applicant and to Fick of its election to terminate the debt review process in terms of section 86(10) of the Act.
10. On 26 May 2010 the applicant served notice on the respondent in terms of section 86(7) (c) and 86(8)(b) of its application in the Oudshoorn Magistrates Court under case number 1632/2010 for a declaration of over indebtedness.
11. On 2 June 2010 the National Credit Regulator (NCR) launched an application in the South Gauteng High Court (SGHC) under case number 20491/2010, seeking an order that the respondent had terminated the debt review process prematurely.

12. On 11 June 2010 the respondent then instituted proceedings in the Western Cape High Court, Cape Town (WCHC) under case number 13259/10 claiming amongst other relief termination of the agreement and the return of the vehicle.
13. On 23 June 2010 the applicant approached the NCT seeking an order for interim relief that the action in the High Court under case number 13259/10 be terminated and that the repossession of the vehicle be stopped.
14. Accordingly, the Tribunal should determine and consider the application for interim relief which was done on 17 September 2010.

**Common Cause**

15. It is common cause that:

- 15.1 the applicant is in possession of the vehicle;
- 15.2 the relief sought by the applicant in the Oudshoorn Magistrates Court is for a declaration of over indebtedness;
- 15.3 the relief sought by the respondent in the WCHC is for the lease to be terminated and for the repossession of the vehicle;
- 15.4 the relief sought by the NCR in the SGHC , amongst other relief is for an order that the respondent contravened section (88)3 of the Act and that the respondent may not validly give notice in terms of section 86 (10) to terminate the debt review process;
- 15.5 the parties to the application for interim relief are substantially the same parties as those referred to the matter before the SGHC, the WCHC and the Oudshoorn Magistrates Court.

### **Analysis of the evidence and argument**

- 16 ~~The application before the Tribunal stems from the applicant experiencing difficulty in maintaining his lease payments on a vehicle leased from the respondent and from the applicant seeking to have himself declared over-indebted.~~
- 17 The respondents submitted that the matter brought by the applicant before the Tribunal is a matter to be decided in the High Court and in the Magistrates Court, because both courts are seized with the matter.
- 18 Furthermore, the respondent contends that the Tribunal has no jurisdiction to grant the order being sought by the applicant.
- 19 In as much as the applicant concedes that the applicant has cases pending in three forums the applicant nonetheless seeks an order from the NCT to suspend the repossession of the vehicle, which is his livelihood, and that the WCHC action, instituted by the respondent, be terminated.
- 20 The applicant's evidence is that the applicant did not defend the matter in the WCHC but, instead, the applicant sought and order for interim relief from the Tribunal.
- 21 The applicant referred the Tribunal to the matter of First Rand Bank vs Wayne Evans, in the Eastern Cape High Court, Case number 1693/10 and to the matter of SATS vs Gideon Mahlala in the Oudshoorn Magistrates Court.
- 22 In considering the application for interim relief the Tribunal had regard to the requisites of *alibi lis pendens*, to the issue of the jurisdiction of the Tribunal to grant the order being sought and to sections 166 and 86(11) of the Act
- 23 The Tribunal also had regard to the evidence led as a whole and to the Act and the Rules.
- 24 The requisites *for lis alibi pendens* are:
- 26.1       there must be litigation pending;

26.2 the other proceedings must be pending between the same parties;

26.3 ~~the pending proceedings must be based on the same cause of action; and~~

26.4 the pending proceedings must be in respect of the same subject matter.

25 It is clear from the evidence that three (3) courts are seized with the matter involving substantially the same parties and arising out of the same set of facts, albeit that the relief sought from each court is different.

26 The Tribunal finds that the disputes in the SGHC, the WCHC and in the Oudshoorn Magistrates Court relates to the same subject matter, being the debt review process and are pending between substantially the same parties.

27 Accordingly, the Tribunal finds that the matter is *lis pendens* and that the Tribunal has no jurisdiction to determine the matter.

28 The orders the Tribunal may grant are set out in section 150 of the Act which states that ;

*"The Tribunal may make an appropriate order in relation to prohibited conduct or required conduct in terms of this act, including-*

*(i) Any other order required to give effect to a rights contemplated in this Act".*

29 It follows that the Tribunal, a creature of statute has limited powers to grant orders sought by parties to an action.

30 Accordingly, the Tribunal finds that it has no jurisdiction to order the termination of the action instituted in the WCHC for the repossession of the vehicle because the High Court has inherent powers and thus unlimited powers to grant any order being sought.

**Costs**

In considering the respondents request for costs the Tribunal is bound by section 147(1) which states that each party participating in a hearing must bear its own costs subject to section 147(2).

**Order**

31 Accordingly, the application for interim relief is :

31.1 dismissed;

31.2 no order is made as to costs.

DATED AT CENTURION THIS 20 OCTOBER 2010.

P. BECK

PRESIDING MEMBER

Concurring

X. MAY

TRIBUNAL MEMBER

M. MUNYAI

TRIBUNAL MEMBER