



National Consumer Tribunal

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IN THE NATIONAL CONSUMER TRIBUNAL, HELD IN PRETORIA

CASE No: NCT/286/2009/138(1) (P)

In the matter between

MARIA MAGDALEN OLYN

Applicant /Consumer

and

**AFRICAN BANK LIMITED
CAPITEC BANK LIMITED
NEDBANK LIMITED**

**1st Respondent/ Credit Provider
2nd Respondent/Credit Provider
3rd Respondent/Credit Provider**

The application was facilitated by the debt counsellor **Lorenzo Lewis**

JUDGMENT

1. INTRODUCTION

1.1 The Applicant is a consumer who applied for debt review in terms of the National Credit Act 34 of 2005 (the Act). The debt counsellor representing the debtor is Lorenzo Lewis. The Applicant is applying for a consent order in terms of section 86(8) read together with section 138 of the Act.

1.2 The debt counsellor found that the Applicant was experiencing difficulty satisfying all obligations under her credit agreements in a timely manner.

1.3 The debt counsellor recommended a restructuring of the payment instalments to all credit providers, as per the agreement which is attached hereto marked "Annexure A".

1.4 All the respective credit providers (Respondents to this consent order) consented to this agreement.

2. APPLICATION FOR CONSENT ORDER

2.1 The Applicant applied for a consent order on 9 December 2009. The Tribunal expressed concern regarding the interest rate which Capitec Bank Limited (a Respondent) was charging the Applicant in the consent order. The matter was adjourned in order for the Tribunal to subpoena the contracts which the Applicant concluded with Capitec Bank.

2.2 The matter commenced again on 21 April 2010. The Tribunal had relevant contracts from Capitec Bank.

3. THE CAPITEC BANK CONTRACTS

The Applicant received two loans from the Bank which are relevant to this matter. The first loan was granted on 31 August 2007 (loan number 1156013818) and the second loan was granted on 28 November 2007 (loan number 1161336980). The loan repayment periods were 18 months and 24 months.

4. THE CONSENT AGREEMENT

The consent agreement attached to the application for a consent order indicates that the Applicant owes Capitec Bank R1189.81 in respect of the first loan and R2744.16 in respect of the second loan. The Applicant has agreed to pay interest in respect of the first loan of 37% per annum and interest of 29.5% per annum in respect of the second loan. The debt counsellor representing the Applicant has indicated that Capitec Bank will not agree to a lesser amount of

interest on the first loan and that the Applicant is at present repaying the loan at an interest rate of 37%.

5. CONSIDERATION

The loan granted to the Applicant in terms of the contract (which is the subject of this consent order) concluded between the Applicant and Capitec Bank constitutes an unsecured credit transaction. When such a loan is granted, credit grantors are entitled to charge maximum rates of interest according to the formula for such loans as set out in Regulation 42 Table A. The legislature has expressed the maximum interest rate which may be charged as a formula rather than as a fixed rate. This means that when the Reserve Bank Repurchase Rate (repo rate) is reduced, credit grantors are obliged to reduce the interest which they are charging particular consumers, if the rates are higher than the maximum amount as allowed in terms of the Regulation. A calculation, based on the applicable formula, indicates that the maximum amount of interest which the credit grantor can charge at the present time is 35.4%. The interest set out in the consent agreement is in excess of this amount.

6. CONCLUSION

The application for a consent order is refused and the Tribunal makes the following order:

The matter is referred to the National Credit Regulator in order to investigate whether there is prohibited conduct on the part of Capitec Bank. The Regulator is requested to report back to the Tribunal within a period of one month from the date of this judgment regarding its findings.

Professor T WOKER

Handed down on this⁶ day of **May 2010**

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD AT CENTURION

Case No:

In the matter between:

MARIA MAGDALENA OLYN
Identity number: I

CONSUMER/1ST APPLICANT

And

AFRICAN BANK LIMITED
CAPITEC BANK LIMITED
NEDBANK LIMITED

1ST RESPONDENT/CREDIT PROVIDER
2ND RESPONDENT/CREDIT PROVIDER
3RD RESPONDENT/CREDIT PROVIDER

**DRAFT CONSENT ORDER IN TERMS OF SECTION 86(8) READ TOGETHER
WITH SECTION 138 OF THE NATIONAL CREDIT ACT 34 OF 2005**

WHEREAS:

- a. The consumer applied for debt review in terms of the National Credit Act 43 of 2005;
- b. The debt counsellor found that the consumer is experiencing difficulty satisfying all obligations under the credit agreements in a timely manner;
- c. The debt counsellor recommended a restructuring of the payment instalments to all the credit providers, as per the agreement which is attached hereto marked: "Annexure B";
- d. All the respective credit providers and the consumer/applicant consented to this agreement, which consents are hereto attached marked "Annexure C"

NOW THEREFORE:

The Tribunal, being satisfied that the Applicant and Respondent are parties to a debt rearrangement facilitated by a debt counsellor under section 86(7) of National Credit Act, hereby orders, by consent of the parties:

1. That the payment structures of the agreement between the Applicant and the Respondents as set out in Annexure "B", be made an order of the National Consumer Tribunal;
2. Which agreement restructures the payment instalment by extending the payment period as indicated in Annexure "C"

| Creditor | Reference | Annual Interest | New Monthly Instalment | Balance | Estimated Period in Months |
|----------------------|---------------|-----------------|------------------------|------------|----------------------------|
| AFRICAN BANK LIMITED | 3668629003 | 10.00% | R381.80 | R12 119.72 | 31 |
| CAPITEC BANK LIMITED | 1161336980 | 29.50% | R165.74 | R1 150.49 | 13 |
| CAPITEC BANK LIMITED | 1156013818 | 37.00% | R255.25 | R2 514.13 | 17 |
| NEDBANK LIMITED | 4829375000201 | 14.00% | R337.21 | R21 368.71 | 43 |

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DATED at Centurion this the _____ day of _____ 2009

REGISTRAR OF THE NATIONAL CONSUMER TRIBUNAL

Applicant/Consumer
Debt Counsellor on behalf of the Consumer

TO:

**THE REGISTRAR OF THE TRIBUNAL
CENTURION**

1. AFRICAN BANK LIMITED
59 16TH ROAD
MIDRAND 1685
2. CAPITEC BANK LIMITED
PO BOX 12451
DIE BOORD
STELLENBOSCH
7613
3. NEDBANK LIMITED
100 MAIN STREET
JOHANNESBURG
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