

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

Case number: NCT/505/2010/149(1)

In the matter between:

**PETER DUBE**

**APPLICANT**

and

**MCCARTHY FINANCE T/A WESBANK**

**RESPONDENT**

Coram:

Ms D Terblanche – Presiding member

Adv F Manamela – Member

Mr X May – Member

Date of Hearing – 3 July 2014

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**JUDGMENT AND REASONS**

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1. This is an application for interim relief in terms of section 149(1) of the National Credit Act, Act 34 of 2005 ("the NCA").
2. Applicant initially moved the application on 17 May 2010, more than 4 years back, before a full panel of the Tribunal.
3. The matter was not heard fully on the day as the parties agreed to a postponement *sine die* for reasons that appear from the record.

4. An order was made on the day postponing the matter "... *sine die*, (that) *the Respondent, Wesbank must not proceed with the enforcement of this matter pending the outcome of this matter and an order for costs was granted in favour of the Applicant.*"
5. This matter is back before the Tribunal as the parties have not been able to resolve the dispute *inter partes*.
6. The understanding, so it appears from the record, was that the Applicant would set down the matter in the event of a settlement of the matter or even if there is no settlement, in the matter in order for the application for interim relief to be finalized. This did not happen.
7. The Respondent had in the meanwhile obtained a Writ of Execution in the High Court against the movable property, a motor vehicle, financed by the Respondent under the credit agreement entered into between the parties during November 2004, in order to interrupt prescription.
8. The writ could not be executed against the property due to this matter that is still pending before the Tribunal and by reason of the Applicant having moved from the domicile reflected in the credit agreement.
9. Section 149(1) allows for interim relief applications in terms of the NCA. The specific wording is as follows:

*"149 (1) At any time, whether or not a hearing has commenced into a complaint, a complainant may apply to the Tribunal for an interim order in respect of that complaint, and the Tribunal may grant such an order if-*

- (a) there is evidence that the allegations may be true;*  
*and*

- (b) *an interim order is reasonably necessary to-*
  - (i) *prevent serious, irreparable damage to that person; or*
  - (ii) *prevent the purposes of this Act from being frustrated;*
- (c) *the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and*
- (d) *the balance of convenience favours the granting of the order.*

(2) *An interim order in terms of this section must not extend beyond the earlier of-*

- (a) *the conclusion of a hearing into the complaint; or*
- (b) *the date that is six months after the date of issue of the interim order.*

(3) *If an interim order has been granted, and a hearing into that matter has not been concluded within six months after the date of that order, the Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months."*

10. Complainant means "a person who has filed a complaint in terms of section 136(1)".

"136. (1) Any person may submit a complaint concerning an alleged contravention of this Act to the National Credit Regulator

*in the prescribed manner and form.”*

11. The powers of the Tribunal are further set out in the Rules of the Tribunal<sup>1</sup>, more particularly Rule 3(1)(c) 'originating as a complaint to the Regulator and referred to the Tribunal in terms of sections 137(1), 140 or 141(1)(b) of the NCA. There is no evidence of any referral to the Tribunal in this matter.
12. From the submissions made by the parties it is clear that in the intervening four years the Applicant have had the full use, possession and enjoyment of the motor vehicle financed by the Respondent in terms of the credit agreement, has not made any payments towards the amounts due to the Respondent, nor came to any arrangement with the Respondent with regard to same.
13. Interim relief, as envisaged in Section 149(1) of the NCA, is urgent relief and premised on relief to an Applicant facing imminent prejudice or harm. The Applicant has not shown-
  - a. The basis of the urgency at the hearing, which even if it existed four years back, would no longer be relevant or applicable; nor
  - b. Serious, irreparable damage to him or that can cause the purposes of the NCA from being frustrated. In fact, it is the Respondent who has been prejudiced as the Applicant has benefitted from the use of the vehicle financed by the Respondent, without any payment for a period in excess of four years.
  - c. The balance of convenience that favours the granting of the order.
14. The period between the dates when the Tribunal heard this matter on

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<sup>1</sup> Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007 ("the Rules of the Tribunal").

the two occasions in 2010 and 2014, by far exceeds any period this Tribunal is empowered to grant an interim relief order for.

## ORDER

15. Accordingly, for the reasons set out above, the Tribunal makes the following order:

15.1 The Applicant's application for interim relief in terms of section 149(1) of the NCA is dismissed; and

15.2 There is no order as to costs.

DATED ON THIS 9<sup>th</sup> DAY OF JULY 2014

[signed]

**D Terblanche**

Presiding Member

Adv F Manamela (Member) and Mr X May (Member) concurring.

Authorised for issue by the National Consumer Tribunal

Case number NCT/505/2010/49(1)

Date 2014.07.18  
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