

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

Case number: NCT/14499/2014/148(1) (P) NCA

In the matter between:

**HANS REINHARD PETTENBURGER-PERWALD (ON BEHALF OF  
MARISKA VAN WYNGAARDEN)**

APPELLANT

and

**MOTOR FINANCE CORPORATION A DIVISION OF  
NEDBANK LTD  
NEDBANK LIMITED  
ABSA LIMITED  
EDCON LIMITED  
WOOLWORTHS LIMITED  
JDG TRADING PROPRIETARY LIMITED**

FIRST RESPONDENT  
SECOND RESPONDENT  
THIRD RESPONDENT  
FOURTH RESPONDENT  
FIFTH RESPONDENT  
SIXTH RESPONDENT

Coram:

Adv J Simpson	–	Presiding Member
Ms D Terblanche	–	Panel Member
Mr X May	–	Panel Member
Date of Hearing	–	07 August 2014

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**JUDGMENT AND REASONS**

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**APPELLANT**

1. The Appellant is Hans Reinhard Pettenburger-Perwald, a major male registered as a debt counsellor in terms of the National Credit Act 34 of 2005 ("the NCA") with registration number NRDC49 (hereinafter referred to as "the Appellant"). The Appellant lodged the appeal on behalf of Mariska Van Wyngaarden, a major female (hereinafter referred to as "Ms Van Wyngaarden").

2. At the hearing an employee of the Appellant, Mr Rynhard De Lange (hereinafter referred to as "Mr De Lange"), appeared on behalf of the Appellant via Skype video and audio transmission.

## RESPONDENTS

3. The first to sixth Respondents are all credit providers registered in terms of the NCA. For the purposes of this judgment a more detailed description of the Respondents is not required.
4. At the hearing of the matter there was no appearance by any of the Respondents or any representative on their behalf.

## APPEAL

5. The Appellant lodged an appeal against the finding of a single member of the Tribunal in terms of section 148(1) of the NCA.
6. The appeal was heard on 7 August 2014 by a full panel of the Tribunal, which comprised of three members.

## BACKGROUND

7. On 11 February 2014 the Appellant lodged an application in terms of section 86(8) of the NCA with the Tribunal on behalf of Ms Van Wyngaarden, to have a debt re-arrangement agreement made an order of the Tribunal in terms of section 138(1) of the NCA (Case number 12855/2014/138).
8. The application was considered by a single member, Ms P Beck, who then refused to grant the application. Ms Beck stated the following in her written refusal dated 16 April 2014 –

*"The Applicant's net disposable income is the sum of R4 999.46...."*

*"The re-arranged total instalment, in the draft consent order, is the amount of R5 247.59...."*

*"Accordingly, the Applicant is financially unable to meet the total instalment in the draft consent order and the order is refused."*

9. The Appellant lodged an appeal against the refusal of the single member on the basis that the Presiding member misinterpreted Ms Van Wyngaarden's income and expenditure budget, as it was presented in the application, which led to the application being incorrectly refused.

## THE HEARING

10. Mr De Lange referred the Tribunal to the assessment summary of Ms Van Wyngaarden's income and expenditure document as it was submitted in the original application. He submitted that the amount of R4 999.46 as referred to in the document and by Ms Beck was not in fact the correct amount available for repayment of the loans. The correct amount available was in fact the amount of R5 800.00 as indicated in the schedule as "Available amount".
11. Mr De Lange further submitted that the debt counsellor had allowed for an amount of R271.56 to be reflected as "Credit agreement linked insurance". This amount reflected the insurance and other monthly fees payable by the consumer on the loan agreements but these amounts were often already included in the agreed monthly instalments. It appears to the Tribunal that many credit providers accept a re-arranged repayment instalment which already includes any fees for insurance or monthly fees. If one has to add this amount of R271.56 to the amount of R4 999.46, then Ms Van Wyngaarden had R5 271.04 available, which was sufficient to cover all the agreed instalments. This amount of R5 271.04 is reflected in the document as "Gross debt affordability".

## CONSIDERATION OF THE EVIDENCE

12. The Tribunal can fully understand why Ms Beck refused the application based on affordability. Based on the description in the document of the amount of R4 999.46 as being the "*Net debt affordability for distribution to settle debts*", Ms Van Wyngaarden was not in a position to pay the accepted total instalment required.
13. The Tribunal acknowledges Mr De Lange's submissions regarding the gross amount available and the amount allowed for possible insurance premiums; however it appears that the Appellant is expecting the Tribunal to decipher and interpret the consumer's income assessment to try and find a basis for affordability.

14. While the Tribunal is not specifically required by the Act to assess the consumer's income and expenditure when considering an application to confirm a debt re-arrangement agreement as an order of the Tribunal, there is nothing preventing the Tribunal from doing so in the interest of confirming that the consumer can afford the agreed repayments. In this instance the information submitted by the Appellant indicated that the consumer could not afford the repayments.
15. The Presiding member who considers these applications cannot reasonably be expected to infer that certain of the amounts in the financial assessment correctly reflect the consumer's position and others not. It is further not reasonable to expect that the Presiding member make an assumption regarding whether or not the insurance premiums are already included in the repayments. For the presiding member to make an informed decision, the information presented must be clear and unambiguous.
16. To avoid a situation such as this it is strongly suggested that the debt counsellor in future rephrase the wording or layout used in the financial assessment document or alternatively clearly and simply illustrate that the instalments agreed to can be paid by the consumer.

## **CONCLUSION**

17. The Tribunal does not find any basis for setting aside the refusal of the application and substituting it with a new order.
18. It must however be noted that it would not be reasonable to deprive the consumer of the opportunity to lodge a new application, should his financial information be properly presented and he is in a position to afford the agreed repayments.

## **ORDER**

Accordingly, the Tribunal makes the following order:

19. The appeal against the refusal of the application by Ms Beck fails.
20. The Appellant is at liberty to lodge an entirely new application to have the debt re-arrangement confirmed as an order of the Tribunal, should Ms Van Wyngaarden's financial information included in the application clearly confirm that she can afford the repayments agreed to.

21. No order is made as to costs

DATED ON THIS 27<sup>th</sup> DAY OF AUGUST 2014

[signed]

Adv. J Simpson

Presiding Member

Ms D Terblanche (Member) and Mr X May (Member) concurring.

Authorised for issue by the National Consumer Tribunal

Case number NCT/14499/2014/148(1)

Date 2014 10 10  
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