

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

Case number: **NCT/297589/2023/141(1)(b)**

In the matter between:

**THEO MACCOLM JACOBS**

APPLICANT

and

**KAMIERAH GABIER (NCRDC2548)  
NATIONAL CREDIT REGULATOR**

FIRST RESPONDENT  
SECOND RESPONDENT

Coram:

Adv C Sassman - Presiding Tribunal member

Ms N Maseti - Tribunal member

Ms Z Ntuli - Tribunal member

Date of hearing - 14 October 2024

Date of judgment - 15 October 2024

<b>JUDGMENT AND REASONS</b>
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**THE PARTIES**

1. The applicant is Theo Maccolm Jacobs (the applicant). The applicant is a consumer, as defined in section 1 of the National Credit Act 34 of 2005 (NCA). At the hearing, the applicant represented himself.
2. The first respondent is Kamierah Gabier (the first respondent). The first respondent is a registered debt counsellor with registration number NCRDC2548. Thariq Orrie, an attorney from Orrie and Associates, represented the first respondent at the hearing.
3. The second respondent is the National Credit Regulator (NCR), a state organ and a juristic person established in terms of section 12 of the NCA to regulate the consumer credit market and ensure compliance with the NCA. The NCR's Senior Acting Legal Advisor, Anda Makrwede, attended the hearing to observe the proceedings.

## **TERMINOLOGY**

4. A reference to a section in this judgment refers to a section of the NCA.

## **APPLICATION TYPE**

5. This is an application in terms of section 141(1)(b), in which the applicant, with leave granted by the Tribunal, seeks redress against the first respondent. The applicant alleges that despite not applying for debt review, the first respondent facilitated such an application without his consent.
6. The first respondent opposes the application. The NCR was joined to the application by an order from the Tribunal but is not opposing the application.

## **BACKGROUND**

7. The applicant alleges that his late wife applied for debt review with the first respondent and that he was unaware of the application at that time. He did not consent to the application and was only informed that he was under debt review when he applied for credit. The NCR investigated the first respondent's conduct previously and filed an application for relief with the Tribunal. In the NCR's application, the first respondent was alleged to have placed consumers under debt review without them applying for the process. On 28 November 2021, the Tribunal confirmed a settlement agreement between the NCR and the first respondent under case number NCT/115755/2019/57(1). In terms of the agreement, the first respondent admitted to the allegations and agreed to take specific actions concerning her registered clients. The applicant alleges that the first respondent has not complied with the order, and his credit profile still shows that he is under debt review. The applicant is seeking an order releasing him from debt review.

## **THE APPLICANT'S SUBMISSIONS**

8. At the hearing, the applicant submitted that the first respondent never obtained his consent for the debt review application and failed to conduct a credit check as required. Had she checked his late wife's credit profile, she would have known that she was married to the applicant and that his consent was needed to proceed with the debt review application. The applicant further submitted that he is not over-indebted. He pays all his creditors on time and does not need his debt restructured. The applicant conceded that the first respondent's representative reached out to him requesting certain documents and information to make an application to court for an order declaring that he was not over-indebted. However, he did not trust him and was fearful that he would have to pay the costs of the application. Despite his previous reservations, he is

now willing to submit all required documentation to the first respondent within 24 hours of such a request to initiate the court application process.

## **THE FIRST RESPONDENT'S SUBMISSIONS**

9. The first respondent submitted that when the applicant's late wife applied for debt review, she indicated that she was unmarried. The first respondent proceeded with the application until she became aware of her marriage in community of property. The applicant refused to consent to the application, and the first respondent could not re-arrange the couple's debt. By then, the application had already been uploaded to the NCR's Debt Help System and reflected on the credit bureaus.
10. In terms of the settlement agreement confirmed by the Tribunal, the first respondent agreed to apply to the Magistrates' Court regarding the applicant's application for debt review. Such an application can confirm that he is not over-indebted and enable his release from debt review. However, the applicant has not complied with the first respondent's requests for certain documents to make the application to court. The first respondent is prepared to make the court application at her expense, take the necessary steps to enable the applicant's release from debt review, and update his credit profile accordingly. However, she can only do so with the applicant's cooperation.

## **CONSIDERATION OF THE EVIDENCE**

11. The Tribunal considered that on 28 November 2021, it confirmed a settlement agreement between the first respondent and the NCR. In terms of the agreement, the first respondent agreed to comply with the provisions of section 86(8)(b), 86(7)(c) read with section 86(10) and make applications to the Magistrates' Court in respect of all its registered clients who had no court orders in place. The Tribunal is satisfied that the debt review application the applicant finds himself a party to is one of the agreements referred to in the settlement agreement. As such, the Tribunal has already granted an order concerning the applicant's case. The Tribunal's role in this matter is *functus officio*, and the matter is *res judicata*.
12. Furthermore, in terms of section 166(2), a complaint against a person who has been the respondent in proceedings before the Tribunal for substantially the same conduct, may not be referred to the Tribunal for adjudication. In this instance, the applicant's complaint that he was placed under debt review without his consent is the same conduct the first respondent was accused of previously. The first respondent admitted to her conduct in the settlement agreement confirmed by the Tribunal. Therefore, the Tribunal is barred from adjudicating the complaint.

13. Although the Tribunal is barred from adjudicating the complaint, the dialogue initiated between the applicant and the first respondent during the hearing suggests that the parties can resolve this matter amicably, as the settlement agreement intended.
14. The Tribunal notes its concern with the conduct of the NCR in issuing the applicant with a notice of non-referral indicating that he may refer the matter to the Tribunal. While section 166(2) prevents the applicant's complaint from being referred to a Tribunal for adjudication, it did not bar the NCR from offering the applicant the necessary guidance and assistance to ensure that he reaped the benefits of the settlement agreement, which included his debt review application. Had the NCR initiated and facilitated the most basic communication between the applicant and the first respondent, the applicant would not have resorted to filing an application for relief with the Tribunal. An application which the Tribunal has no jurisdiction to adjudicate.

## **CONCLUSION**

15. The Tribunal finds that the matter is res judicata, and its role concerning the applicant's complaint is functus officio. The Tribunal further finds that in terms of section 166(2), the applicant's complaint against the first respondent may not be referred to the Tribunal since it is substantially the same as the complaint against the first respondent adjudicated in the settlement agreement under case NCT/115755/2019/57(1).

## **ORDER**

16. Accordingly, the Tribunal makes the following order:
  - 16.1 The application is dismissed;
  - 16.2 The Registrar may serve a copy of this judgment on the Chief Executive Officer of the National Credit Regulator; and
  - 16.3 There is no cost order.

Adv C Sassman

Presiding Tribunal member

Tribunal members Ms N Maseti and Ms Z Ntuli concurring.

**Authorised for issue by The National Consumer Tribunal**

**National Consumer Tribunal**

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