

National Credit Regulator hails court judgment as a boost for consumer protection

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The National Credit Regulator (NCR) welcomes last week's judgment by the North Gauteng High Court in a case brought by African Bank as a major step forward in the interpretation of consumer protection legislation. The matter involved the legality of Section 58 of the Magistrates Courts Act, which is used by credit providers to obtain a judgment against consumers who are in default of making repayments in terms of their credit agreements. The NCR intervened in the matter to ensure that rights afforded to consumers in terms of the NCA are upheld.

"Concerns were raised about credit providers utilising this section to obtain judgment against consumers without these consumers being afforded adequate protection under the provisions of the National Credit Act (NCA)," says Peter Setou, Senior Manager: Education and Strategy at the NCR. "There were also concerns that clerks of the Magistrates Court were simply acting as a rubber stamp in granting judgment without looking at the lawfulness of the credit agreement." Section 58 of the Magistrates Courts Act (consent to judgment proceedings in the Magistrates Court) is a quick and cost effective method for credit providers to obtain a judgment against defaulting consumers. The main feature of the section 58 procedure involves consumers providing written consent to the credit provider applying for judgment against them.

"The problem arose when consumers who had not been properly informed of their rights under the NCA would sign a consent to judgment for being in default, while in fact the granting of that credit in the first place amounted to the extension of reckless credit," says Setou. "The clerk would not have been in a position to enquire whether the credit agreement in fact amounted to reckless credit and would simply grant judgment against the consumer."

He says the court's decision is significant because it ruled that the Magistrates Courts must take into consideration the legal relationship between credit providers and consumers when obtaining a judgment against a consumer. The effect of this is that the provisions of the NCA are applicable and must be taken into account.

"The major thrust of this judgment is that it obliges clerks of the court and Magistrates to take cognisance of the provision of the NCA before consent orders are granted. The result thereof is that consumers' rights will be protected ", concluded Setou.