

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/~~NO~~.
(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~.
(3) REVISED.
7/7/2010

Case No.: 34793/2008

Date heard: 10 December 2009

Date of judgment: 9/7/2010

In the matter between:

AFRICAN BANK LIMITED

APPLICANT

and

ADDITIONAL MAGISTRATE MYAMBO N.O.

FIRST RESPONDENT

KHUMISO ABEDNEGO SEKETEMA

SECOND RESPONDENT

THE NATIONAL CREDIT REGULATOR

THIRD RESPONDENT

JUDGMENT

DU PLESSIS J:

Section 58 of the **Magistrates' Courts Act, 32 of 1944** provides for a procedure whereby a creditor, on obtaining the written consent of a debtor, can

obtain judgment by consent. This review application concerns interaction between some of the provisions of the **National Credit Act, 34 of 2005** ("the NCA") and section 58 of the Magistrates' Courts Act to which I shall simply refer as "section 58". In particular the questions are whether a consumer who owes a debt under a credit agreement governed by the NCA can validly consent to judgment in terms of section 58 and, if so, what effect the NCA has on the procedure prescribed by section 58 ("the section 58-procedure") and on the adjudication of a request for judgment by consent.

In accordance with the section 58-procedure, the applicant in this case applied to the clerk of the Pretoria Magistrates' Court for judgment by consent against the second respondent. The clerk of the court referred the matter to the first respondent, a magistrate. The first respondent refused to grant judgment. The applicant now seeks an order reviewing and setting aside the first respondent's decision to refuse judgment. In terms of its notice of motion, the applicant also sought a number of declaratory orders but, as I shall point out, events have overtaken the applicant's proposed declaratory relief.

The first respondent, to whom I shall refer as "the magistrate", abides by this court's decision. The second respondent ("the consumer") did not enter an appearance to oppose the application. The applicant served the application on the National Credit Regulator, a juristic person established under section 12 of the NCA. The Regulator applied to be joined in these proceedings. It was so

joined by an order of this court and it now is the third respondent. The Regulator does not oppose the review application.

The declaratory orders that the applicant sought arose from practical difficulties that are encountered with the interaction between the NCA and the section 58-procedure. Speaking for myself, I had some doubt as to whether this court has the jurisdiction to entertain the applicant's proposed declaratory relief. When I raised my doubt with the parties, the Regulator filed a counter application wherein it seeks declaratory orders that address the same practical difficulties. The matter was postponed in order for the Regulator to notify interested parties of its counter application. Such notice has now been given.

Section 16(1)(b)(ii) of the NCA empowers the Regulator to apply to a court "for a declaratory order on the interpretation or application of any provision" of the NCA. I shall in due course deal with each of the declaratory orders that the Regulator seeks. Suffice it now to point out that the parties agreed that this court's power to grant declaratory relief on application by the Regulator is much wider than its power to do so under the common law or in terms of section 19(1)(a)(iii) of the **Supreme Court Act, 59 of 1959**. Accordingly, counsel agreed that this court has the jurisdiction to grant the declaratory orders that the Regulator seeks. In the circumstances it is unnecessary to determine whether this court also has the jurisdiction to entertain the declaratory relief that the applicant sought. The declaratory orders that the Regulator seeks must and will

be considered. I shall deal with the review application first and then with the declaratory relief sought.

The Review

The review application arose in the following context. It is the principal business of the applicant, a bank and a credit provider under the NCA, to grant unsecured cash loans to customers. In May 2006 it granted such a loan to the second respondent. The loan with interest thereon was repayable in monthly instalments.

When the loan was granted, the NCA had not come into operation yet. The loan was at the time granted in accordance with an exemption under the **Usury Act, 73 of 1968**. When, but for some provisions to which I shall refer later, the NCA came into operation on 1 June 2006, it repealed the Usury Act.¹ The repeal of the Usury Act was subject to transitional arrangements contained in Schedule 3 of the NCA. It is not in issue that the loan agreement between the applicant and the consumer constitutes a “pre-existing credit agreement” as defined in Schedule 3 of the NCA². With some exceptions³, the loan is governed by the NCA.⁴

¹ See section 172(4)(a) of the NCA.

² See item 1 of Schedule 3.

³ I shall deal with exceptions as and when they become relevant to this judgment.

⁴ See item 4 of Schedule 3.

I return to the facts. The consumer had to make the first monthly repayment of the loan in June 2006. He duly made that payment but from July 2006 onwards, he defaulted on his monthly payments save for one irregular payment that he made in November 2006. On about 15 September 2006 the applicant caused a letter of demand in terms of section 129(1) of the NCA to be posted to the consumer's chosen domicile.⁵ The consumer did not respond. During about December 2007 a tracing agent commissioned by the applicant delivered a second letter of demand to the consumer. The second letter of demand complied with the provisions of section 58 and with the relevant Magistrates' Courts' Rules⁶ ("the Rules") thus commencing the section 58-procedure. On receipt of the second letter of demand, the consumer, at the request of the tracing agent, signed a consent to judgment. He also undertook to pay the outstanding amount, interest and costs in monthly instalments. In terms of section 58 and on the strength of the consumer's written consent, the applicant, on 4 March 2008, applied to the clerk of the Pretoria Magistrates' Court for judgment by consent. The clerk of the court referred the matter⁷ to the first respondent. The learned magistrate refused judgment and initially gave a number of brief reasons to which I shall refer as the "initial reasons". She was formally asked for reasons and then gave fuller reasons to which I shall refer as her "reasons".

⁵ Section 129 of the NCA only came into operation on 1 June 2007. Thus, when the applicant sent the letter of demand in terms of section 129, it was not yet required. Nothing turns on that, however, as section 129 had come into operation by the time judgment by consent was applied for. See *infra*.

⁶ See Rule 4B of the Magistrates' Courts Rules

⁷ See Rule 12(7) of the Magistrates' Courts' Rules to which fuller reference will be made later.

As I understand the learned magistrate's reasons, her essential conclusion was that the concept of a judgment by consent is contrary to the purposes of the NCA. Before I deal with that essential conclusion, I first turn to reasons that the magistrate gave in support thereof.

The learned magistrate reasoned that section 19 of the **Credit Agreements Act, 75 of 1980** prohibited a creditor (except in certain circumstances) to use the procedures provided for in sections 57 and 58 of the **Magistrates' Courts Act**. She further reasoned that the Credit Agreements Act is a predecessor of the NCA and that, although there is no similar provision in the NCA, "the National Credit Act envisioned a similar bar".

The NCA repealed the Credit Agreements Act.⁸ In that sense the Credit Agreements Act is one of the "predecessors" of the NCA. Section 19 of the Credit Agreements Act, however, did not provide that a creditor may not use the consent to judgment procedure provided for in section 58 of the Magistrates' Courts Act.⁹ To that extent, the learned magistrate's reasoning is, with respect, incorrectly premised.¹⁰

⁸ Section 172(4)(b) of the NCA.

⁹ Section 19 of the Credit Agreements Act provided:

19. **Orders as to committal for contempt of court and emolument attachment and garnishee orders.**—No court shall make—

- (a) an order for committal for contempt of court;
- (b) an emoluments attachment order;
- (c) a garnishee order;

I now turn to what I have termed the magistrate's essential conclusion, *i.e.* that the concept of a judgment by consent is contrary to the purposes of the NCA.

Section 58 of the Magistrates' Courts Act provides:

"58. Consent to judgment or to judgment and an order for payment

of judgment debt in instalments.—(1) If any person (in this section called the defendant), upon receipt of a letter of demand or service upon him of a summons demanding payment of debt, consents in writing to judgment in favour of the creditor (in this section called the plaintiff) for the amount of the debt and the costs claimed in the letter of demand or summons, or for any other amount, the clerk of the court shall, on the written request of the plaintiff or his attorney accompanied by—

- (a) if no summons has been issued, a copy of the letter of demand; and

(d) an order referred to in section 65A (1) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), or in rule 45 (12) (j) of the Uniform Rules of Court published under section 43 (2) (a) of the Supreme Court Act, 1959 (Act No. 59 of 1959), for the purpose of enforcing compliance with any judgment or order of court for payment by any credit receiver of any amount payable in terms of, or as a result of the termination or rescission of, or as damages for the breach of, a credit agreement which is an instalments sale transaction, or in terms of any novation of any claim for such amount unless the credit grantor concerned has satisfied the court that—

- (i) the goods in question cannot be recovered by him by reason of the fact that without any fault on his part those goods have been destroyed or become lost;
- (ii) the credit receiver is no longer in possession of those goods and the credit grantor cannot locate the whereabouts thereof in the Republic;
- (iii) those goods have been seized under the Customs and Excise Act, 1964 (Act No. 91 of 1964), and that it is unlikely that the credit grantor will obtain possession thereof.

¹⁰ I shall deal later with Rule 12(5) of the Rules of the Magistrates' Courts that might be thought to support the learned magistrate's conclusion.

- (b) the defendant's written consent to judgment,
- (i) enter judgment in favour of the plaintiff for the amount of the debt and the costs for which the defendant has consented to judgment; and
- (ii) if it appears from the defendant's written consent to judgment that he has also consented to an order of court for payment in specified instalments or otherwise of the amount of the debt and costs in respect of which he has consented to judgment, order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with this consent, and such order shall be deemed to be an order of the court mentioned in section 65A (1).

(2) The provisions of section 57 (3) and (4) shall apply in respect of the judgment and court order referred to in subsection (1) of this section."

Section 58(2) is to the effect that the judgment creditor must notify the debtor that a judgment has been entered¹¹. Its further effect is that the consent judgment shall have the effect of a default judgment¹². In terms of section 58A of the Magistrates' Courts Act a judgment entered by the clerk of the court shall be deemed to be a judgment of the court. To sum up, when the clerk of the court grants judgment by consent, the judgment is deemed to be a default judgment granted by the court.

¹¹ Section 57(3).

¹² Section 57(4).

The NCA did not expressly repeal section 58. On the contrary, the NCA provides for a mechanism to resolve conflict between section 58 and the provisions of the NCA: Section 172(1) of the NCA provides that if “there is a conflict between a provision of this Act mentioned in the first column of the table set out in Schedule 1, and a provision of another Act set out in the second column of that table, the conflict must be resolved in accordance with the rule set out in the third column of that table.” Section 58 is mentioned in the second column of Schedule 1 to the NCA. I shall in due course return to the provisions of section 172(1) read with Schedule 1. It is for present purposes sufficient to state that the mere fact that the NCA provides for a mechanism to resolve conflict between section 58 and the NCA, necessarily implies that the NCA did not repeal section 58 but recognised its continued existence. This conclusion is fortified by sections 172(2) and (4) that respectively provide expressly for the amendment of certain provisions in other statutes and for the repeal of statutes. Section 58 is not mentioned in these subsections.

The section 58-procedure is a particularly cost-effective and speedy one. The advantages of cost effective and speedy debt collection are self evident. Provided that the provisions of section 58 and those of the NCA are applied properly and with due regard to the parties' rights, it is in the interests of credit providers, of consumers and of justice that the procedure be utilised. The purposes of the NCA are set out in section 3 thereof. Mindful of the dangers of selective quotation, I would nevertheless stress the introductory part of section 3:

"The purposes of this Act are to promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers". Cost- and time effective collection procedures that are fair will promote these aims. In fact, increasing the costs of debt collection in respect of credit agreements will probably lead to increased cost of credit which consumers will ultimately have to pay. Subject to what I say later about the interaction between specific provisions of the NCA and the section 58-procedure, I cannot agree with the learned magistrate that the procedure as such is contrary to the purposes of the NCA.

By holding that the section 58-procedure is contrary to the NCA and cannot be applied in cases originating from credit agreements, the learned magistrate, with respect, misconceived her jurisdiction. That was a gross irregularity and on that basis alone the review must succeed¹³ and the matter remitted to the learned magistrate for her to consider it afresh. It is necessary to point out that the learned magistrate gave further reasons that the parties, or one of them, take issue with. It is convenient to deal with those reasons in the course of considering the Regulator's counter application.

Before dealing with the counter application, I must first deal with one of the learned magistrate's initial reasons. The reason reads: "Non compliance with the National Credit Act in that no documents attached regarding whether credit

¹³ See section 24(1)(c) of the **Supreme Court Act, 59 of 1959**.

granted reckless or not". I have pointed out that the loan to the consumer in this case pre-dates the NCA and is a "pre-existing credit agreement" as defined in the NCA.¹⁴ Part D of Chapter 4¹⁵ applies to a pre-existing credit agreement "only to the extent that it does not concern reckless credit".¹⁶ It follows that the credit that the applicant granted to the consumer in this case cannot be held to have been reckless credit.

The Counter Application

I intend to deal in turn with each of the declaratory orders that the Regulator seeks. Before I do that, it is convenient to deal with an argument presented to us on the applicant's behalf. The argument concerns the nature of the section 58-procedure. It underpinned many of the applicant's contentions in respect of the declaratory orders that it took issue with.

Section 58 deals with the collection of a debt. That presupposes an underlying legal relationship¹⁷ that gave rise to the debt. For the applicant Mr Louw argued that when a defendant consents to judgment in terms of section 58, a new cause of action, distinct from the underlying legal relationship, is created. The legal position, counsel argued, is similar to that when a debtor issues a cheque to pay a debt. The cheque neither novates nor replaces the underlying

¹⁴ Schedule 3, item 1.

¹⁵ The provisions of the NCA that introduce "reckless credit" into our law are to be found in Part D of Chapter 4.

¹⁶ Item 4 of Schedule 3 to the NCA.

¹⁷ "Regsverbintenis".

legal relationship that gave rise to the debt, but constitutes a new cause of action distinct from that underlying legal relationship.¹⁸ Consequently, the argument went on, when a plaintiff requests judgment by consent, the clerk of the court or the magistrate, as the case may be, is concerned only with the consent as a cause of action and not with the underlying cause of action. This means, the argument continued, that where consent to judgment originated from a credit agreement governed by the NCA, the clerk of the court or the magistrate is not concerned with the credit agreement but only with the consent to judgment. In essence the argument was that there is almost no interaction, and therefore no conflict, between section 58 and the NCA.

Section 58 applies, firstly, to cases wherein any person consents to judgment “upon ... service of a summons demanding payment of a¹⁹ debt”. In such cases the summons must contain particulars of the plaintiff’s claim²⁰ and it must set out a cause of action²¹. That cause of action will necessarily be based on the underlying legal relationship that gave rise to the debt. When the summons is issued, no other cause of action exists.

Section 58 also provides for an exceptional procedure whereby a plaintiff can obtain judgment without the need to issue and serve a summons: In terms

¹⁸ See for instance **Adams v SA Motor Industries Employers Association 1981 (3) SA 1189 (A)**

¹⁹ The “a” has been omitted from the English text of section 58(1), but see the signed Afrikaans text that refers to “n skuld” and not just “skuld”.

²⁰ See Rule 6(1)(a) of the Magistrates’ Courts’ Rules.

²¹ If it does not, the summons will be subject to exception. See Rule 17(2)(a) of the Magistrates’ Courts’ Rules.

of section 58(1) a person can consent to judgment also “upon receipt of a letter of demand ... demanding payment of a debt” and the plaintiff can then proceed, on the strength of the letter of demand and the written consent, to obtain judgment.²² Rule 4B of the Rules provides that the letter of demand “shall contain particulars about the nature and amount of the claim”. For the reasons set out in relation to the summons, the particulars can only be those of the underlying cause of action.

In my view it follows that a debtor who consents to judgment under section 58 does so in respect of a cause of action specified in the summons or the letter of demand. By the same token, when the plaintiff requests the clerk of the court to grant judgment in terms of section 58, the request is based on the cause of action set out in the summons or the letter of demand. That is why section 58 specifically requires the letter of demand to be placed before the clerk of the court.²³ Section 58(1) created a procedure whereby a plaintiff can obtain judgment. The function of the written consent is to obviate the need for the plaintiff to prove the claim based on the underlying legal relationship. Once the clerk of the court grants judgment by consent, it has the effect of a judgment by default²⁴ granted by the court²⁵ in respect of the cause of action set out in the

²² See section 58(1)(a) and (b).

²³ A summons will be part of the court file and will be before the clerk of the court when the request of judgment is made.

²⁴ See section 58(2) read with section 57(4) of the Magistrates' Courts Act.

²⁵ See section 58A of the Magistrates' Courts Act.

summons or the letter of demand. The consent judgment renders that cause of action *res judicata*.²⁶

It is concluded that when a plaintiff applies for judgment by consent in terms of section 58, it is an application for judgment based on the cause of action stated in the summons or the letter of demand. It is that cause of action that is before the clerk of the court and not a new cause of action based only on the written consent to judgment.

That brings me to the orders that the Regulator seeks. Each order sought serves as a heading to its discussion. The number of the relevant prayer, as it appears in the Regulator's Notice of Application and Set Down dated 4 November 2009, is given in brackets.

The commencement of the NCA did not repeal section 58 or render it nugatory in respect of debts to which the NCA applies. (1.1)

I have already concluded that the NCA did not repeal section 58 and that the section 58-procedure may be utilised in cases to which the NCA applies.

²⁶ The judgment in *Blaikie-Johnstone v P. Hollingsworth (Pty) Ltd* 1974 3 SA 392 (D) dealt with rule 31(1) of the High Court Rules. The wording of rule 31(1) is different from that of section 58. The approach of the learned judge is nevertheless instructive. He had no difficulty in proceeding on the footing that a judgment on confession, as a consent judgment is called in the High Court rule, is a judgment based on the underlying cause of action and that it operates as *res judicata* in respect of that cause of action. See in particular the remarks at p. 394A and at 395A to C.

The commencement of the NCA did not affect the efficacy of the section 58-procedure in respect of debts to which the NCA applies.
(1.2)

As I shall point out later in this judgment, the NCA certainly had an effect on the section 58-procedure. Whether the NCA affected the efficacy of the section 58-procedure is, however, a value judgment. Some may perceive it to be as efficacious as ever. Others may differ. It serves no purpose for this court to declare its value judgment. No order will be made in terms of prayer 1.2.

Clerks of the court may refer the request for judgment in terms of section 58 to the court in terms of rule 12(7) of the Magistrates' Courts' Rules. (1.4)

In terms of section 58 "the clerk of the court shall ... enter judgment in favour of the plaintiff" if the written request for judgment²⁷ is accompanied by the letter of demand, if there is one, and the defendant's written consent to judgment.

As a general proposition the word "shall" is used to convey that a legislative provision is peremptory. In my view, however, the word "shall" in section 58 does not mean that clerks of the court are obliged to grant judgment if the application is formally in order. Judgments by consent that clerks of the court grant are deemed to be default judgments granted by the court. In view thereof

²⁷ In terms of the Rules the written request will be on Form 5B.

the legislature, when it used the word "shall", could not have intended that clerks of the court have no function other than to check whether the application for consent judgment is formally in order. In my view the use of the word "shall" in section 58 limits the clerk of the court's discretion in the sense that, if the application is formally in order, the clerk of the court has no discretion finally to refuse judgment. That does not mean, however, that the clerk of the court may not refer to the court an application that is formally in order. Put differently, the word "shall" in section 58 means that clerks of the court have the discretion to do one of three things. They can refuse judgment. They can grant judgment if the papers are formally in order. If the papers are formally in order but the clerk of the court has reason to question the plaintiff's entitlement to judgment, the clerk of the court must refer the matter to the court in terms of rule 12(7). This interpretation of section 58 ensures that the court retains a measure of oversight over a procedure whereby clerks of the court grant judgments so to speak in the court's name. The interpretation is also practical and consonant with the provisions of rules 11(6), 12(5) and 12(7).

Rule 12(5) provides: "The clerk of the court shall refer to the court any request for judgment on a claim founded on any cause of action arising from or based on an agreement governed by the ... Credit Agreements Act, 1980 (Act No. 75 of 1980), and the court shall thereupon make such order or give such judgment as it may deem fit". Some magistrates hold that rule 12(5) applies to cases where the cause of action arose from a credit agreement under the NCA.

Accordingly, their view is that all requests for judgment by consent based on credit agreements under the NCA must be referred to the court. For the following reasons rule 12(5) does not apply to claims that arose from credit agreements under the NCA.

Section 12(1) of the **Interpretation Act, 33 of 1957** provides as follows: "Where a law repeals and re-enacts with or without modifications, any provision of a former law, references in any other law to the provision so repealed shall, unless the contrary intention appears, be construed as references to the provision so re-enacted." Section 172(4) of the NCA repealed the Credit Agreements Act but did not re-enact it. Thus, the reference to the latter act in rule 12(5) cannot be read as a reference to the NCA. An observation in this regard is, we think, appropriate. The NCA calls for the careful balancing of the rights and interests of consumers against those of credit providers. Such balancing is best performed by the courts. The failure to amend rule 12(5) to refer to the NCA might have been an oversight. We suggest that the Regulator discusses the possibility of amending the rule with the relevant legislative authority.

As the law stands, where the cause of action arose from a credit agreement under the NCA, clerks of the court are not in every case²⁸ obliged to refer the request for judgment by consent to the court. The conclusion does not

²⁸ There are many instances where clerks of the court must refer applications to the court. I deal with them later

mean, however, that in such cases it is business as usual. A purpose that permeates the NCA is "to protect consumers"²⁹ by way of a variety of protective measures provided for in the NCA. Those protective measures affect the clerk of the court's discretion in various ways. Some of the protective measures are dealt with in this judgment. A few general observations are now appropriate.

Section 172(1) of the NCA read with Schedule 1 thereto provides that if there is a conflict between section 58 on the one hand and, on the other hand Part D of Chapter 4, section 127, section 129, section 131, section 132, Chapter 7 or section 164 of the NCA, the provisions of the NCA "prevail to the extent of the conflict." Thus, to the extent that the use of the word "shall" in section 58 limits the clerk of the courts' discretion, or that of the court, in a manner that does not allow them to give full effect to the relevant provisions of the NCA, the provisions of the NCA must prevail.

If a clerk of the court has any uncertainty as to whether granting judgment against a consumer might be in conflict with the NCA, and with protective measures in particular, the clerk of the court must refer the matter to the court.

An order in terms of prayer 1.4 must therefore be made but with the proviso that there are many instances when clerks of the court must refer an application to the court.

²⁹ Section 3 of the NCA.

In order to obtain judgment in terms of section 58, where the cause of action arose from a credit agreement in terms of the NCA, the plaintiff must:

- a** **comply with the provisions of section 58** (prayer 1.3.1);
- b** **allege in the request for judgment that the requirements of section 129 and 130 of the NCA have been met** (prayer 1.3.3);
- c** **attach a copy of the section 129 letter of demand to the application.** (prayer 1.3.2)

There is nothing in the NCA that provides or implies that a credit provider need not comply with section 58 when requesting judgment by consent. I shall point out that the NCA sets additional requirements, but the credit provider (plaintiff) must comply with section 58.

Must the credit provider (plaintiff) allege that the requirements of sections 129 and 130 of the NCA have been met?

Section 129(1)(a) of the NCA provides: "If the consumer is in default under a credit agreement, the credit provider ... may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the

payments under the agreement up to date". I shall refer to this notice as the section 129-notice.

Section 86(10) of the NCA provides that "if a consumer is in default under a credit agreement that is being reviewed in terms of this section³⁰, the credit provider in respect of that credit agreement may give notice to terminate the review in the prescribed manner". The section 86(10) notice must be given to the consumer, the debt counsellor and to the Regulator.³¹

In terms of section 129(1)(b)(i) of the NCA a credit provider, "subject to section 130(2), may not commence any legal proceedings to enforce the agreement before ... first providing notice to the consumer, as contemplated in paragraph (a)³², or in section 86 (10), as the case may be".

It has been held that section 129(1)(b) is peremptory.³³ Pointing out that there are cases in which the NCA does not require a section 129-notice or a section 86(10)-notice³⁴, I respectfully agree that, where the NCA requires it, the requirement is peremptory. By virtue of section 129(1)(b)(i) the credit provider's cause of action is not complete unless the section 129-notice or a section 86(10)-notice has been given. It follows that, where the action against a consumer is

³⁰ This is a reference to an application for debt review under section 86 of the NCA.

³¹ Paragraphs a, b and c of section 86(10).

³² This is a reference to section 129(1)(a).

³³ **ABSA Bank Ltd v Prochaska t/a Bianca Cara Interiors 2009 (2) SA 545 (DCLD)** at para. 31 and 34; see also **Scholtz, Otto, Van Zyl, Van Heerden and Campbell: Guide to the National Credit Act**, 12-7 (paragraph 12.4.2 and the authorities referred to in footnotes 48, 49 and 50. I shall refer to this publication as "**Stolz, Otto et al**".

³⁴ See section 129(2).

commenced by way of summons, the summons must contain an allegation that either section 129(1)(a) or section 86(10) has been complied with or an allegation that notice was not necessary, stating the reason. Where the action is commenced by way of a letter of demand, the letter of demand must contain such an allegation.³⁵

It is important to note that the allegation must be contained in the summons or the letter of demand and not in the request for judgment by consent. That is so because the allegation completes a cause of action and also because the consumer must be aware that the allegation is made. If he or she is not so aware, the consent will not be informed consent.

In terms of section 129(1)(b)(ii) a credit provider may “not commence any legal proceedings to enforce the agreement before ... meeting any further requirements set out in section 130.”

Section 130(1) provides that, subject to section 130(2)³⁶, “a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under that credit agreement for at least 20 business days”. By virtue of the provisions of section 129(1)(b)(ii) read with section 130(1) and for the reasons I have given, the

³⁵ I have, as regards allegations to be made, throughout made use of the helpful discussion by **Scholtz, Otto *et al*** at 12-22, para. 12.8.

³⁶ Section 130(2) provides for exceptions to the 20-day requirement. The reader is referred to the subsection.

summons or the letter of demand, as the case may be, must contain allegations, firstly that the consumer is in default and, secondly, that he or she has been in default under the credit agreement for at least 20 business days.

Under section 130(1)(a) of the NCA, "a credit provider may approach the court for an order to enforce a credit agreement only if ... at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86(9), or section 129(1), as the case may be". The reference to section 86(9) is a patent error. It should read 86(10). Expiry of the 10 day period must also be alleged in the summons or the letter of demand.

Section 130(1)(b) provides that "a credit provider may approach the court for an order to enforce a credit agreement only if ..., in the case of a notice contemplated in section 129(1), the consumer has ... not responded to that notice... or (has) ... responded to the notice by rejecting the credit provider's proposals". Such an allegation must also be in the summons or the letter of demand.

In the case of an instalment agreement, a secured loan or a lease, the summons or the letter of demand must contain an allegation that "the consumer has not surrendered the relevant property to the credit provider as contemplated in section 127" of the NCA. (Section 130(1)(c))

Section 130(3) of the NCA provides:

“(3) Despite any provision of law or contract to the contrary, in any proceedings commenced in a court in respect of a credit agreement to which this Act applies, the court may determine the matter only if the court is satisfied that—

- (a) in the case of proceedings to which sections 127, 129 or 131 apply, the procedures required by those sections have been complied with;
- (b) there is no matter arising under that credit agreement, and pending before the Tribunal, that could result in an order affecting the issues to be determined by the court; and
- (c) that the credit provider has not approached the court—
 - (i) during the time that the matter was before a debt counsellor, alternative dispute resolution agent, consumer court or the ombud with jurisdiction; or
 - (ii) despite the consumer having—
 - (aa) surrendered property to the credit provider, and before that property has been sold;
 - (bb) agreed to a proposal made in terms of section 129(1)(a) and acted in good faith in fulfilment of that agreement;
 - (cc) complied with an agreed plan as contemplated in section 129(1)(a); or

(dd) brought the payments under the credit agreement up to date, as contemplated in section 129(1)(a)."

There can be no doubt that proceedings to obtain judgment by consent constitute legal proceedings. In the section 58-procedure the clerk of the court, though fulfilling functions of a court, is not a court, however.³⁷ In the light thereof that the clerk of the court could grant a judgment that is to be deemed to be a default judgment by the court, the section 58-procedure in my view constitutes "proceedings commenced in a court".³⁸ The requirements of section 130(3) of the NCA must therefore be met in the case of the section 58-procedure. To hold otherwise would defeat the very purpose of section 130(3).

The requirements of section 130(3) comprise a number of different facts. Before the court (or the clerk of the court) may determine the matter, it must be satisfied of each of the facts mentioned in section 130(3). It is the credit provider (plaintiff) who must satisfy the court. Facts are placed before a court either by admission or by evidence. Where facts are alleged in the summons or in the letter of demand, the defendant is taken to admit those facts if he or she consents to judgment. It follows that a credit provider must deal in the summons or in the letter of demand with each one of the relevant requirements of section 130(3) and allege that each one has been met. In order for the consent to be informed, a blanket allegation that "each requirement of section 130(3) has been

³⁷ See section 166 of the **Constitution of the Republic of South Africa, 1996**. "Court" is not defined in the NCA.

³⁸ I have earlier held that they are proceedings concerning the credit agreement.

met" will be insufficient. In the particulars of claim each requirement must be dealt with separately. If that is not done, the consumer cannot be taken to have admitted the facts.

The last question under this heading is whether the credit provider seeking judgment by consent must attach a copy of the section 129-notice. Judgment by consent presupposes that the debtor's consent was fully informed. In cases to which the NCA applies, informed consent includes awareness on the part of the consumer of the alternatives that are mentioned in section 129(1)(a)³⁹. Towards ensuring that the consumer's consent was informed, it is necessary to attach a copy of the section 129-notice from which the clerk of the court or the court will see what was conveyed to the consumer.

In **BMW Financial Services (SA) (Pty) Ltd v Dr MB Mulaudzi Inc. 2009 (3) SA 348 (BPD)** at para. 13 Mogoeng JP (as he then was) suggested that the section 129-notice must not be "a dry and mechanical reproduction of the subsection". I respectfully agree with the views that the learned judge president expressed in the paragraph referred to. The notice must meaningfully bring a variety of important facts and options to the attention of the consumer: It must bring the default to the consumer's attention; it must contain a proposal or proposals aimed, not only at the resolution of any dispute between the parties,

³⁹ Debt counselling, alternative dispute resolution agent, consumer court or ombud with jurisdiction.

but also at ways to bring payments up to date⁴⁰. The proposal or proposals must be such that the consumer can respond thereto⁴¹. The notice should convey to the consumer that "debt enforcement will follow should he fail to respond to the notice or reject the proposals".⁴²

The NCA prescribes no form for the section 129-notice. Therefore, in terms of section 64(1)(b), it must be in "plain language". Whether the notice is in plain language is, having regard to section 64(2), a question of fact that depends on the circumstances of each case, including the "class of persons" that the consumer is part of. In a nutshell, the notice must be meaningful, understandable and in plain language. It must, as Mogoeng JP pointed out, add flesh to the skeletal requirements of section 129(1)(a).

In paragraph 12.4.10 of their work, **Scholtz, Otto et al** suggest a format for the notice that, in my view, serves as a helpful guideline. I would add that the notice should contain the names and contact details of persons that the consumer could contact to discuss the proposal.

The above remarks concerning the format of the section 129-notice is of particular importance in the context of the section 58-procedure. For the consumer's consent to be informed, he or she must have understood the

⁴⁰ See section 130(3)(c)(ii)

⁴¹ Section 130(1)(b).

⁴² **Scholtz, Otto et al**, 12-16, para. 12.4.9

available alternatives to legal proceedings and he or she must have been given an opportunity to pursue those alternatives.

In view of the aforesaid, the order that the Regulator seeks must be amended to read: **"It is declared that in order to obtain judgment in terms of section 58 of the Magistrates' Courts Act, where the original cause of action was a credit agreement under the National Credit Act, a plaintiff must comply with the provisions of section 58 of the Magistrates' Courts Act and attach to the request for judgment (Form 5B) a true copy of the section 129-notice contemplated in the National Credit Act. Such a plaintiff must in the summons or letter of demand, as the case may be, deal with each one of the relevant provisions of section 129 and 130 of the National Credit Act and allege that each one has been complied with. It is not sufficient to make a general allegation that "section 129 and section 130 of the National Credit Act have been complied with".**

Where a plaintiff seeks judgment by consent in terms of section 58 of the Magistrates' Courts Act, clerks of the court and magistrates, as the case may be, are entitled to interrogate the application for judgment and in so doing they may require proof by a plaintiff of any fact or document pertaining to the underlying cause of action.

(Prayers 1.5.1 and 1.5.2.1)

The heading is a summary of the two prayers referred to. The orders that the Regulator seeks in terms of these prayers deal with all applications for consent judgment under section 58. In terms of section 16(1)(b)(ii) of the NCA the Regulator may apply to a court for a declaratory order on the interpretation or application of any provision of the NCA. It follows that in this application only the interpretation and application of the NCA in relation to the section 58-procedure are relevant. It follows further that, subject to what I say in the next paragraph, no order should be made in respect of prayers 1.5.1 and 1.5.2.1.

For reasons that appear from this judgment as a whole, clerks of the court and magistrates must know whether the underlying cause of action in an application for consent judgment arose from a credit agreement under the NCA. They must know that in order properly and fully to apply the provisions of the NCA.

Because the underlying cause of action will appear from the summons or the letter of demand, clerks of the court will in most cases know that a credit agreement is at issue. It will in the nature of things rarely happen, but there might be cases where, although a credit agreement is at issue, the plaintiff does not pertinently allege that. If, on reading the documentation before him or her, the clerk of the court has reason to suspect that a credit agreement is at issue,

the matter must be referred to the court⁴³. The court may then interrogate the request and call for documents or facts to establish whether a credit agreement is at issue or not. To hold otherwise would render nugatory the provisions of the NCA in cases where a plaintiff has failed to disclose that a credit agreement is at issue.

In the result an order in the following terms must be made: **"It is declared that where a plaintiff seeks judgment by consent in terms of section 58 of the Magistrates' Courts Act, magistrates are entitled to interrogate the application for judgment and in so doing they may require proof by a plaintiff of any fact or document pertaining to the underlying cause of action so as to determine whether a credit agreement under the National Credit Act is at issue. (Prayers 1.5.1 and 1.5.2)**

Where a plaintiff seeks judgment by consent in terms of section 58 of the Magistrates' Courts Act, based on a cause of action arising from a credit agreement under the National Credit Act, clerks of court and magistrates, as the case may be, are entitled to interrogate the application for judgment and in so doing they may require proof by a plaintiff of any fact or document so as to enable the clerk of the court or the court to determine whether the granting of the credit in question was an instance of the granting of reckless credit or not. (1.5.2.2.1).

⁴³ By reason of the clerks' limited discretion, they cannot call for evidence.

This heading is a summary of the relevant prayer. I have, however, again limited the summary so as to reflect the relief only to the extent that it pertains to the interpretation or application of the NCA. The same applies to all further headings in this judgment.

In Part D of Chapter 4 thereof the NCA introduced into our law the concepts of reckless credit and over-indebtedness. The NCA carefully defines both over-indebtedness and reckless credit.⁴⁴ For present purposes, however, their meanings may be taken to be self evident. The NCA also provides for mechanisms to address reckless credit and over-indebtedness. The question that the proposed order now under consideration asks is this: Are clerks of the court and magistrates, in the course of the section 58-procedure, empowered to consider whether the underlying credit agreement is an instance of reckless credit?

Section 83(1) of the NCA provides:

“Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, the court may declare that the credit agreement is reckless, as determined in accordance with this Part.”

⁴⁴ Sections 79 and 80.

The first question is whether a request for judgment by consent based on a credit agreement constitutes “any court proceedings in which a credit agreement is being considered”. Mr Louw for the applicant argued that all that is being considered in the section 58-procedure is the consent as a separate cause of action. I have earlier pointed out that he argued that the underlying cause of action is not under consideration. For the reasons given earlier, a request for judgment by consent is based on the underlying cause of action giving rise to the debt in question. If that underlying cause of action arose from a credit agreement governed by the NCA, then the request for judgment by consent constitutes “court proceedings in which a credit agreement is being considered”. It follows that the provisions of section 83 of the NCA apply to requests for judgment by consent arising from a credit agreement under the NCA.

Section 83 of the NCA gives to courts the power to declare that a credit agreement is reckless. I have earlier held that the clerk of the court is not a court as envisaged in the NCA.⁴⁵ If clerks of the court have reason to believe that a particular credit agreement may be an instance of reckless credit as provided for in section 80 of the NCA, they must refer the request for consent judgment to the court.

In this regard credit providers who seek judgment by consent could avoid unnecessary referrals to the court by putting facts before the clerk of the court so as to satisfy him or her that the request did not arise from an instance of reckless

⁴⁵ See footnote 37.

credit⁴⁶. Credit providers could so satisfy clerks of the court by alleging in the summons or the letter of demand, as the case may be, that a credit assessment as required by section 81(2) of the NCA had been conducted before the credit agreement was entered into and that the credit agreement is not reckless as provided for in section 80(1) of the NCA. Proof that the agreement is not reckless could also be put before the clerk of the court by way of affidavit.

Magistrates to whom requests for judgment by consent are referred sit as courts.⁴⁷ Accordingly, section 83 empowers them to consider whether a particular credit agreement is an instance of reckless credit. In order to do that, magistrates may call for evidence, including documentary evidence, which will enable them to determine whether a particular credit agreement is reckless as defined in section 80 of the NCA.

A cautionary note is called for: Not every credit agreement is an instance of reckless credit. Not every request for judgment by consent is based on an instance of reckless credit. A court will start investigating the possibility that it has before it an instance of reckless credit if it has before it information, or a lack thereof, grounding a reasonable belief that the credit in question may have been granted recklessly as provided for in section 80 of the NCA.

* For reasons stated earlier, this does not apply to "pre-existing credit agreements"

** See Rule 12(7).

The order to be made in respect of this question must reflect that only the court has the power to declare a credit agreement reckless.

Clerks of court and magistrates may interrogate the application for judgment so as to determine that the defendant is not over-indebted (as is meant in the National Credit Act) (1.5.2.2.2).

Section 85 of the NCA provides:

"Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, if it is alleged that the consumer under a credit agreement is over-indebted, the court may

- (a) refer the matter directly to a debt counsellor with a request that the debt counsellor evaluate the consumer's circumstances and make a recommendation to the court in terms of section 86 (7);
or
- (b) declare that the consumer is over-indebted, as determined in accordance with this Part, and make any order contemplated in section 87 to relieve the consumer's over-indebtedness." (The underlining is mine.)

As in the case of possible reckless credit, the court can exercise the powers under section 85 "in any court proceedings in which a credit agreement is

being considered" but, different from reckless credit cases, only "if it is alleged that the consumer under a credit agreement is over-indebted".

As with the powers under section 83 and for the reasons that I have given, the clerk of the court cannot exercise the powers under section 85. It will in the nature of consent to judgment rarely happen, but if it is alleged in the papers before the clerk of the court that the consumer is over-indebted, the clerk must refer the matter to the court.

Once the matter has been referred to the magistrate, the latter is entitled to interrogate the application. If it is alleged that the consumer is over-indebted, the magistrate may call for evidence, including documentary evidence, to determine whether the court should exercise its powers under section 85 of the NCA.

In my view the following order should be made: **"It is declared that where a plaintiff seeks judgment by consent in terms of section 58 of the Magistrates' Courts Act, based on a cause of action arising from a credit agreement under the National Credit Act and where it is alleged that the defendant is over-indebted, clerks of the court must refer the application to the court. In such cases, magistrates are entitled to interrogate the application for judgment and in so doing they may require proof by a**

plaintiff of any fact or document so as to enable the court to determine whether it should act in terms of the section 85 of the National Credit Act.

Clerks of the court and magistrates may interrogate the application for judgment so as to enable them to establish whether the plaintiff is registered with the National Credit Regulator. (1.5.2.2.3)

Sections 40(3) and (4) of the NCA provide:

“(3) A person who is required in terms of subsection (1)⁴⁸ to be registered as a credit provider, but who is not so registered, must not offer, make available or extend credit, enter into a credit agreement or agree to do any of those things.

(4) A credit agreement entered into by a credit provider who is required to be registered in terms of subsection (1) but who is not so registered is an unlawful agreement and void to the extent provided for in section 89.”

In terms of section 89(4) certain unregistered credit providers could conclude lawful credit agreements, but that is the exception. Section 89(5) provides what the effect of an unlawful credit agreement is:

“(5) If a credit agreement is unlawful in terms of this section⁴⁹, despite any provision of common law, any other legislation or any provision of an agreement to the contrary, a court must order that—

⁴⁸ Of section 40.

⁴⁹ And section 40(4), see section 89(2)(d).

- (a) the credit agreement is void as from the date the agreement was entered into;
- (b) the credit provider must refund to the consumer any money paid by the consumer under that agreement to the credit provider, with interest calculated—
 - (i) at the rate set out in that agreement; and
 - (ii) for the period from the date on which the consumer paid the money to the credit provider, until the date the money is refunded to the consumer; and
- (c) all the purported rights of the credit provider under that credit agreement to recover any money paid or goods delivered to, or on behalf of, the consumer in terms of that agreement are either
 - (i) cancelled, unless the court concludes that doing so in the circumstances would unjustly enrich the consumer; or
 - (ii) forfeit to the State, if the court concludes that cancelling those rights in the circumstances would unjustly enrich the consumer.”

Relevant to the present case, the effect is that the credit provider cannot enforce an unlawful credit agreement. It follows that the credit provider seeking to enforce a credit agreement must allege that he/she/it is registered as such or

that it is, or was when the agreement was concluded, in terms of the NCA not necessary to be so registered.

If, in cases to which the NCA apply, the summons or letter of demand in the course of the section 58-procedure does not contain an allegation that the credit provider was registered as such in terms of the NCA, the clerk of the court cannot grant judgment. He or she must refer the application to the court⁵⁰. The court may then interrogate the application and apply the relevant provisions of the NCA. An order reflecting that must be made.

Clerks of court and magistrates may interrogate the application for judgment as to the computation of the admitted debt (1.5.2.2.4)

Based on information before him or her, a clerk of the court may reasonably believe that the outstanding debt under a credit agreement has, despite the consumer's consent to judgment, not been computed in accordance with the NCA. It might for instance be a case where the maximum prescribed interest rate has been exceeded. If the clerk has such a belief, he or she must refer the request to the court. The magistrate may then interrogate the application. Subject thereto that clerks of the court cannot interrogate the request in the manner now under discussion, an order as set out above must be made.

⁵⁰ That is the effect of the word "shall" in section 58.

Clerks of the court and magistrates may interrogate the application for judgment so as to establish that affordability calculations had been performed before the loan agreement had been entered into. (1.5.2.2.5).

We have not been referred to any provision in the NCA that requires “affordability calculations” to be performed before a credit agreement is entered into. While those words are not used, sections 81 and 82, in an effort to combat reckless credit, are aimed at ensuring that the consumer is not granted credit that he or she cannot afford. I have already dealt with reckless credit and over-indebtedness. In my view a further order in that regard will be confusing and it is unnecessary.

Clerks of the court and magistrates may interrogate the application for judgment so as to establish that the debtor failed to respond to the plaintiff’s letter of demand issued in terms of section 129 of the National Credit Act or that the debtor rejected a proposal made therein (1.5.2.2.6).

I have held that it is necessary for the credit provider in the summons or letter of demand to allege that at least 10 business days have elapsed since the credit provider delivered a section 129-notice to the consumer and that the consumer has not responded thereto or that the consumer has rejected the credit

provider's proposals contained in the notice.⁵¹ I have also held that the section 129-notice must be in plain language, must understandable and must contain a meaningful proposal.

If a consumer who has seen the allegations in the summons or the letter of demand and who has received meaningful section 129-notice consents to judgment, he or she is, ordinarily, taken to have admitted the allegations. In such cases the clerk of the court will ordinarily grant judgment if the request is in order.

There may be cases in which the clerk of the court, despite compliance with the above requirements, has reason to believe that, for instance, the consumer did not fully understand his or her rights. In such cases the clerk of the court cannot refuse judgment because the application will on the face of it be in order. The clerk of the court who has such reasonable doubt must refer the application to the court. The court can then interrogate the application.

Credit providers could avoid unnecessary referrals to the court by presenting to the consumer for signature a consent that contains a paragraph that conveys that the consumer was aware of and fully understood his or her rights and options. What I have in mind is a paragraph along the following lines: "I have received the attached notice in terms of section 129(1)(a) of the National Credit Act. The contents of the notice and the credit provider's proposals have

⁵¹ Section 130(1)(a), 130(1)(b)(i) and (ii).

been explained to me in the official language of my choice. I understand the credit provider's proposals but I prefer to consent to judgment as set out herein."

An order in the above terms must therefore be made, subject thereto that clerks of the court have no power so to interrogate the application.

The parties agreed that no order as to costs should be made.

In the result the following orders are made:

1. The decision of the first respondent given on 9 April 2008 refusing the request of the applicant that judgment be entered against the second respondent in the Pretoria Magistrates' Court, case number 30241/08, is reviewed and set aside.
2. The aforesaid matter is remitted to the first respondent to reconsider the request of the applicant for judgment against the second respondent.

It is declared that:

1. The commencement of the National Credit Act, 34 of 2005, did not repeal section 58 of the Magistrates' Courts Act, 32 of 1944 or render it nugatory in respect of debts to which the National Credit Act applies. (1.1)
2. In order to obtain judgment in terms of section 58 of the Magistrates' Courts Act, where the original cause of action was a credit agreement under the National Credit Act, a plaintiff must comply with the provisions of

section 58 of the Magistrates' Courts Act and attach to the request for judgment (Form 5B) a true copy of the section 129-notice contemplated in the National Credit Act. Such a plaintiff must in the summons or letter of demand, as the case may be, deal with each one of the relevant provisions of section 129 and 130 of the National Credit Act and allege that each one has been complied with. It is not sufficient to make a general allegation that "section 129 and section 130 of the National Credit Act have been complied with". (Prayer 1.3)

3. In cases to which the National Credit Act applies, clerks of the court may refer the request for judgment in terms of section 58 to the court in terms of rule 12(7) of the Magistrates' Courts' Rules. In many instances clerks of the court must refer such requests to the court, especially when they are uncertain as to whether the consumer has been given the full benefit of protective measures provided for in the National Credit Act. (1.4)
4. Where a plaintiff seeks judgment by consent in terms of section 58 of the Magistrates' Courts Act, magistrates are entitled to interrogate the application for judgment and in so doing they may require proof by a plaintiff of any fact or document pertaining to the underlying cause of action so as to determine whether a credit agreement under the National Credit Act is at issue. (Prayer 1.5.2.1)
5. Where a plaintiff seeks judgment by consent in terms of section 58 of the Magistrates' Courts Act, based on a cause of action arising from a credit agreement under the National Credit Act, magistrates are entitled to

interrogate the application for judgment and they may require proof by a plaintiff of any fact or document so as to enable the court to determine whether the granting of the credit in question was an instance of the granting of reckless credit or not. (1.5.2.2.1)

6. Where a plaintiff seeks judgment by consent in terms of section 58 of the Magistrates' Courts Act, based on a cause of action arising from a credit agreement under the National Credit Act and where it is alleged that the defendant is over-indebted, clerks of the court must refer the application to the court. In such a case, magistrates are entitled to interrogate the application for judgment and in so doing they may require proof by a plaintiff of any fact or document so as to enable the court to determine whether it should act in terms of the section 85 of the National Credit Act. (1.5.2.2.2)
7. Where a plaintiff seeks judgment by consent in terms of section 58 of the Magistrates' Courts Act, based on a cause of action arising from a credit agreement under the National Credit Act, magistrates are entitled to interrogate the application for judgment and in so doing they may require proof by a plaintiff of any fact or document:
 - 7.1 so as to enable the court to establish whether the plaintiff is registered as a credit provider with the National Credit Regulator. (1.5.2.2.3)
 - 7.2 pertaining to the computation of the admitted debt. (1.5.2.2.4)

7.3 so as to establish that the debtor failed to respond to the plaintiff's letter of demand issued in terms of section 129 of the National Credit Act or that the debtor rejected a proposal made therein (1.5.2.2.6).



B R DU PLESSIS
JUDGE OF THE HIGH COURT

I agree.

J-N-M-POSWA
JUDGE OF THE HIGH COURT

I agree.



T M MAKGOKA
JUDGE OF THE HIGH COURT

Attorneys for the applicant: SMITH-SMITH ATTORNEYS
Dirma Building
26 Long Street
KEMPTON PARK
1620

Counsel for Applicant: ADV P F LOUW SC

Attorney for first and second respondents: No appearance

Attorneys for third respondent: MOTHLE JOOMA SABDIA INC
First floor, Duncan Manor
Cnr Duncan and Brooks Streets
Brooklyn
PRETORIA

Counsel for third respondent: ADV P G ROBINSION SC