

IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, PORT ELIZABETH

CASE NO: 2978/2015
Date heard: 20 November 2015
Date delivered: 1 March 2016

In the matter between

NEDBANK LIMITED

Applicant

And

FABIAN EDWIN NORRIS
Respondent

First

SONJA VOLSCHENK

Second Respondent

MAGISTRATE DUMANI N.O.

Third Respondent

AFRICAN BANK LIMITED

Fourth Respondent

THOMAS WINTERBROER N.O.

Fifth Respondent

ELLERINES FURNISHERS (PTY) LTD
t/a FURNITURE CITY
Respondent

Sixth

JAYANT DAJI PEMA N.O.

Seventh Respondent

LESLIE MATUSON N.O.

Eighth Respondent

ABSA BANK LIMITED

Ninth Respondent

BRIDGE LOANS (PTY) LTD

Tenth Respondent

THOMAS GEORGE NELL N.O.
Respondent

Eleventh

WONGA FINANCE SA (PTY) LTD

Twelfth Respondent

MARKHAMS (PTY) LTD
Respondent

Thirteenth

EDGARS CONSOLIDATED STORES LIMITED

Fourteenth Respondent

EAST CAPE DEBT ADMINISTRATORS
Respondent

Fifteenth

DR. N. N. CHETTY

Sixteenth Respondent

JUDGMENT

GOOSEN, J.

1. The applicant seeks to review and set aside an order made by the magistrate's court on 4 February 2014 rearranging the debt obligations of the first respondent in terms of s 87 (1) (b) (ii) of the National Credit Act 34 of 2005 (hereinafter referred to as the NCA) and to set aside a subsequent order, on 30 January 2015, refusing rescission of the first order. In addition, the applicant seeks declaratory relief. In regard to the latter the applicant seeks an order declaring that:
 - (a) A magistrates court hearing a matter in terms of s 87 (1) of the Act does not enjoy the jurisdiction to vary (by reduction or otherwise), the contractually agreed interest rate applicable to a credit agreement;
 - (b) A re-arrangement proposal in terms of s 86 (7) of the Act that contemplates a monthly instalment, which is less than the monthly interest which accrues to the outstanding balance is *ultra vires* the Act and accordingly, a magistrate's court hearing the matter does not enjoy jurisdiction to grant an order in terms of such proposal;
 - (c) An order purportedly granted in each of the above instances is a nullity in law and accordingly void *ab initio* and may be ignored as if it doesn't exist.
2. In the alternative to this declaratory relief the applicant seeks an order declaring that a re-arrangement order as set out above constitutes an arbitrary deprivation or limitation of the applicant's right to property, as protected by s 25 (1) of the Constitution and therefore invalid.

Background and relevant facts

3. The applicant is a registered credit provider as defined in the NCA. On 29 November 2011 the first respondent made an application to the applicant for an unsecured personal loan facility. The applicant presented the first respondent with a pre-agreement statement, a quotation and the proposed terms and conditions of the loan agreement. These were accepted by the first respondent and on 29 November 2011 the parties entered into an unsecured personal loan agreement (the “credit agreement”). In terms of the agreement the applicant advanced to the first respondent the sum of R120 000.00 on account number [.....]. It was agreed that the first respondent would charge an initiation fee, a monthly service fee, interest on the outstanding balance of the loan amount at a fixed rate of 17.5% per annum, calculated daily on the outstanding balance and capitalized, and an amount for credit life insurance in a monthly sum of R529.80. The total loan amount, inclusive of charges and interest would be R220 669.40 repayable by the first respondent by way of 60 equal instalments in the amount of R3674.49. The credit agreement would terminate on 1 December 2016.

4. On or about 29 August 2013 the first respondent applied to the second respondent, a registered debt counsellor, to be declared over indebted in terms of s86 (1) of the NCA. In due course the second respondent, having apparently made a determination of over-indebtedness, applied in terms of s86 (7)(c)(ii) (aa) and (bb) for a debt restructuring order. This application, brought in terms of Rule 55 of the magistrate’s court rules culminated in the debt restructuring order made by the third respondent on 4 February 2014. I shall return hereunder to the procedure which was followed prior to the order being made.

5. The order granted by the magistrate on 4 February 2014 is in the following terms:
 - It is ordered that:
 1. The First Respondent (hereinafter referred to as “the consumer”) is found and declared to be over-indebted in terms of the National Credit Act 34 of 2005.
 2. The obligations of the consumer unto the last Respondent be re-arranged in accordance with the debt re-arrangement payment proposal prepared by the Applicant in accordance with section 86 (7)(c)(i)(aa) and the National Credit Act 34 of 2005 and as is attached hereto as Annexure A.
 3. The consumer pays the gross available amount, identified in the debt re-arrangement payment proposal and specifically the sum of R1 600.00 directly to the Payment Distribution Agent, an accredited payment distribution agent of the National Credit Regulator.

4. The first payment by the Consumers, in terms of this order, of the gross available amount, be made before or on the 5th of every month in which this order is granted and monthly thereafter, before or on the 5th day of each succeeding month.
 5. That the distribution payment by the Payment Distribution Agent only occur once the Applicant's debt counselling fee, as shall be determined and calculated in accordance with the guidelines laid down by the National Credit Regulator and the legal costs related and incidental to the Consumer's application, in terms of section 86 (1) of the National Credit Act of 2005, had been paid by the Payment Distribution Agent for the gross available amount payable to it in terms of this order.
 6. That the Payment Distribution Agent is entitled to recover its distribution charges, as shall be raised in accordance with the guidelines of the National Credit Regulator, from the said nett available amount, before making distribution payments to the Affected Credit Providers.
 7. The consumers pays the costs of this application on an unopposed basis. [sic]
6. The re-arrangement of the first respondent's obligations is set out in Annexure A to the order. In relation to the applicant, it was confirmed that the outstanding balance of the loan was R105 612.15. Provision was made for payment of a distributable amount to the applicant of a monthly instalment of R289.15. The re-arranged period to expire 260 months after the date of the order, with interest to be charged at 0%.
7. An application was made to rescind this order. The basis upon which the rescission was sought raised a number of procedural and substantive irregularities. The applicant also addressed some, if not all, of the issues upon which relief is sought in this application. These will be dealt with hereunder. On 30 January 2015 the third respondent dismissed the application for rescission of the re-arrangement order. In doing so the third respondent *mero motu* ordered that:
- “the interest rates on accounts relating to the Applicant are changed to the contractually agreed rates, effective from the date hereof.”
8. Subsequent to the dismissal of the rescission application the applicant sought advice in respect of the prospects of an appeal and proceeded to note an appeal 27 February 2015. An appeal record was prepared and subsequently filed. However applicant was advised that the nature of the issues raised were such that the matter is one more suited to consideration by way of review. Accordingly the appeal was not prosecuted and this application was commenced on 30 July 2015 and was ultimately set down for hearing in November 2015.

9. To the extent necessary, the applicant seeks condonation for the late prosecution of the review although there are no fixed time periods within which such review must be prosecuted. For reasons which will become apparent hereunder it is in the interests of justice that such condonation, if it is required, be granted.

10. Before turning to consideration of the merits of the application. It is necessary to deal with a question concerning this court's review jurisdiction. The issue was raised by the court at the hearing of the matter. It arises because prior to the enactment of the Superior Courts Act, Act 10 of 2013, this court was a Local Division of the Eastern Cape Provincial Division. It accordingly did not have jurisdiction to hear reviews or appeals. Subsequent to the enactment of the Superior Courts Act this has continued to be the practice. However, in this instance the application is brought before this court and it is requested to exercise its review jurisdiction.

11. The Superior Courts Act marks a significant step in the re-organisation and rationalisation of superior courts in the post-1994 constitutional democratic order. The preamble to the A notes that:

... item 16 (6) (a) of Schedule 6 of the Constitution provides that as soon as practical after the Constitution took effect all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the Constitution;
 NOTING FURTHER that, with the advent of the democratic constitutional dispensation in 1994, the Republic inherited a fragmented court structure and infrastructure, which were largely derived from our colonial history and was subsequently further structured to serve the segregation objectives of the apartheid dispensation;

12. The re-organisation and rationalisation of the court structures is of particular moment to the Eastern Cape since, prior to the enactment of the Superior Courts Act, the superior courts in the province exhibited all of the characteristics of a fragmented structure and jurisdiction. In *Thembanani Wholesalers (Pty) Ltd v September and others* 2014 (5) SA 51 (ECG) Chetty J noted that notwithstanding the constitutional eradication of balkanised territories, until the promulgation of Superior Courts Act,

“the *status quo* remained, and the existing courts, the Eastern Cape Division, the Supreme Court of Transkei and Supreme Court of Ciskei respectively, albeit with various

modifications and guises, continued operating independently of each other, exercising original territorial jurisdiction over the defined geographical areas.¹

13. *Thembani Wholesalers* settled the question as to the territorial jurisdiction of the Division. It did not, however, deal with the question of the jurisdiction, other than territorial, of the local seats of the Division.
14. The Superior Courts Act does away with the erstwhile distinction between a “provincial” and a “local” division. The Act establishes nine “divisions” which correspond in name to the nine provinces. A “division” means “any division of the High Court”.² A ‘division’ consists of the Judge President, one or more Deputy Judges President and so any judges as determined by the President each with headquarters within the area of jurisdiction of that Division.³ Section 6(3) deals with the area of jurisdiction of a Division. Section 6(3)(c) provides that the Minister, after consultation with the Judicial Services Commission, may establish one or more local seats of a Division. In terms of s 50, at the commencement of the Superior Courts Act the High Courts of Bhisho, Mthatha and Port Elizabeth became local seats of the Eastern Cape Division and the area of jurisdiction of those courts part of the area of jurisdiction of the Division.
15. The effect of these provisions is to create a single unitary Division in which, as will be demonstrated hereunder, the courts of the division exercise the jurisdiction of the Division, subject only to territorial limitation based on their location at a seat of the Division.
16. Section 21(1) deals with the persons over whom and matters in relation to which a Division has jurisdiction. It provides that a Division has jurisdiction over all persons residing or being in and in relation to all causes arising or offences triable within its area of jurisdiction and has the power,
 - (a) to hear and determine appeals from all Magistrates Courts within its area of jurisdiction;
 - (b) to review the proceedings of all such courts;
 - (c)

¹ *Thembani Wholesalers* at par 5

² s 1 of the Act

³ s 6(2)

17. In s 22, which deals with the grounds of review of proceedings of Magistrates Courts, the introductory portion of sub-section (1) indicates that review proceedings may be brought “before a court of the Division”. The equivalent provision of the now repealed Supreme Court Act indicated that the power to review a decision of a lower court was confined to provincial divisions and ‘a local division having review jurisdiction’. In terms of s 19(2)(b) of the repealed Act only the Witwatersrand Local Division was vested with both appeal and review jurisdiction.
18. The Superior Courts Act does not in terms address this. There is no express provision which indicates that the Witwatersrand Local Division, now a local seat of the Gauteng Division, no longer enjoys such jurisdiction. No doubt if it had been intended to do so the new Act would have had to specifically so provide. The absence of an express provision saving the appeal and review jurisdiction of the local seat of that Division points, in my view, to the clear intention of the legislature to confer the power to hear and determine appeals and reviews upon courts of a Division whether sitting at the main seat or a local seat of the Division.
19. In this regard s6(4) provides that:
 - If a Division has one or more local seats –
 - (a) the main seat of that Division has concurrent appeal jurisdiction over the area of jurisdiction of any local seat of that Division, and the Judge President of the Division may direct that an appeal against a decision of a single judge or of a Magistrates’ Court within that area of jurisdiction may be heard at the main seat of the Division.
 - (b)
 - (c) The Judge President of that Division may assign all the judges of that Division within the Division as he or she deems fit.
20. The use of the word “concurrent” and the express provision that an appeal may be heard at the main seat, indicates that the local seat has appeal jurisdiction in relation to appeals originating from courts within its area of jurisdiction. In the *Thembanani Wholesalers* matter Chetty J dealt with an argument based upon the omission in the Superior Courts Act of a provision equivalent to s 6(2) of the Supreme Court Act which was advanced in support of the proposition that concurrency of territorial jurisdiction was not intended by the new Act by examining s 6(2). That section provided that the provincial divisions of the Transvaal, Natal and Eastern Cape shall exercise concurrent jurisdiction in the areas of the

Witwatersrand, Durban and Coast and South Eastern Cape local divisions. The learned judge pointed out that,

The effect of s 6 (2) of the old Act was not to confer jurisdiction on the Provincial Division – it had original jurisdiction. The subsection merely conferred concurrent jurisdiction on the local Division over a specified territorial area, the whole of which fell under the area of jurisdiction of the Provincial Division.

21. By parity of reasoning the same applies in relation to s 6(4) of the new Act. It does not confer appeal jurisdiction on the Division. It exercises such jurisdiction as original jurisdiction over the whole of its territory. The effect of s 6 (4) of the new Act is to confer appeal jurisdiction upon local seats of the Division over the territorial area of the local seat.
22. The term “court of the division”, which is used *inter alia* in s 22, is to be understood in the context of s 14 which deals with the composition of courts and the manner of arriving at decisions. Provision is made for courts of first instance to be constituted by a single judge and for appeals to be heard by courts consisting of either two or three judges as may be determined by the Judge President. The section makes it clear that a ‘court of the Division’ refers to a judge or judges of the Division constituted as a court in terms of section 14 irrespective of where that court sits. Therefore a court sitting at the local seat is a court of the Division which exercises the jurisdiction of a Division, subject only to the limitation as to territory and its constitution in terms of s 14.
23. It follows that this court, duly and properly constituted, has jurisdiction to review the decisions of a magistrate’s court within its area of jurisdiction.
24. I turn now to the merits of the application. This requires, in the first instance, an outline of the relevant provisions of the NCA.
25. The preamble to the NCA indicates that the Act is intended to promote a fair and non-discriminatory market place for access to credit. Section 3 sets out the purpose of the NCA, namely to promote a fair, transparent, competitive, sustainable, efficient and

accessible credit market. The section identifies several mechanisms by which this is to be achieved, including by,

- (g) addressing and preventing over-indebtedness of consumers, and providing mechanisms for resolving over-indebtedness based on the principle of satisfaction by the consumer of all responsible financial obligations;
- (h) ...
- (i) providing for a consistent and harmonized system of debt restructuring, enforcement and judgment, which places priority on the eventual satisfaction of all responsible consumer obligations under credit agreements.

26. Section 79 states:

- (1) A consumer is over-indebted if the preponderance of available information at the time that a determination is made indicates that the particular consumer is or will be unable to satisfy in a timely manner all the obligations under all the credit agreements to which the consumer is party, having regard to that consumer's –
 - (a) Financial means, prospects and obligations;
 - (b) Probable propensity to satisfy in a timely manner all the obligations under all the credit agreements to which the consumer is a party, as indicated by the consumer's history of debt repayment.

27. Section 86 (1) provides that a credit receiver may apply to a debt counsellor in the prescribed manner and form to be declared over-indebted. Upon acceptance of the application, in terms of s 86(6), the debt counsellor must, within the prescribed manner and time, determine whether the credit receiver appears to be over-indebted and, if the consumer seeks such declaration, whether any of the credit agreements appear to be reckless.

28. Sub-section (7) provides that if, as a result of the assessment conducted, the debt counsellor concludes that:

- (c) the consumer is over-indebted, the debt counsellor may issue a proposal recommending that the Magistrate's court make either or both of the following orders –
 - (i) that one or more of the consumer's credit agreements be declared to be reckless credit, if the debt counsellor has concluded that those agreements appear to be reckless; and
 - (ii) that one or more of the consumer's obligations be re-arranged by –
 - (aa) extending the period of the agreement and reducing the amount of each payment due accordingly;
 - (bb) postponing during a specified period the dates on which payments are due under the agreement;

- (cc) extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; or
 - (dd) recalculating the consumer's obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6.
- 29. A finding that the consumer is over-indebted, reasonably made in accordance with the prescribed procedure, is a pre-requisite for a valid application to court made in terms of section 86 (8) (b) of the Act.
- 30. Upon a valid application for debt restructuring being made, a magistrate's court is empowered to hear the application and may make the orders contemplated in s 87(1). The court may either reject the recommendation or application or make an order in terms of either s 86(7)(c)(i) or (ii) or both such orders where appropriate.
- 31. With the statutory scheme in mind I turn to the applicant's case in relation to each of the orders in turn.

The debt re-arrangement order of 4 February 2015

- 32. As noted above, the application for debt re-arrangement was commenced in December 2013. The notice of motion indicated that parties wishing to oppose the application were required to notify the applicant (the second respondent in this application) on or before 6 December 2013, failing which the application would be heard on 7 January 2014.
- 33. In its founding papers the applicant states that a notice of intention to oppose was served on the second respondent's attorneys of record on 6 December 2013 at 12:51pm and filed at court on 9 December 2013. This is borne out by the copies of said notices included in the record. On 7 January the applicant's attorney attended at court to ensure that the matter did not proceed. He was informed by the clerk of the court that the matter was in any event not properly set down and that the court would not be sitting. On 8 January the attorney wrote to the second respondent's attorneys confirming this and requesting notice of set down of the matter. No reply was received and no notice of set down was thereafter served on the applicant.

34. The court file however, indicates that the date reflected on the notice of motion was deleted and another – 21 January – was entered in manuscript. On this day the matter was postponed to 4 February and on that date an order was granted in the absence of the applicant and any other of the interested parties.
35. These uncontested allegations point to a gross irregularity in the proceedings. On this ground alone the applicant would be entitled to an order setting aside the order granted on 4 January 2015. It would also be entitled to an order setting aside the refusal of the rescission application, since on the facts disclosed the order granted in the absence of the applicant ought to have been rescinded.
36. The applicant, however, points to irregularities which relate to substantive issues in which, so it is submitted, have a material bearing on the broader declaratory relief sought.
37. The first of these concerns the basis upon which the magistrate purported to exercise the jurisdiction conferred by s 87(1) of the NCA. An application for debt re-arrangement can only be made if the debt counsellor makes a determination that the consumer is over-indebted. A finding that the consumer is over indebted can only be made if the preponderance of all of the information available indicates that the consumer will be unable to satisfy all of his or her obligations. In the first instance it is the obligation of the debt counsellor to make such a determination. Once that is made application may be made in terms of s 86. This determination is therefore a pre-requisite and must be established as a jurisdictional fact before a debt re-arrangement order can be made in terms of s 87 (1) (cf. *Absa Bank v Robb*⁴).
38. In this instance the evidentiary material placed before the magistrate was such that the magistrate could not reasonably have come to the conclusion that the consumer was indeed over-indebted. All that was placed before the magistrate was the assertion that “the consumer’s repayments exceed his income”.

⁴ Unreported Judgment, Case no A3030/2012, GJ, 14 March 2013

39. An application for debt relief must be in accordance with Rule 55 (*Nedbank Ltd v National Credit Regulator* 2011 (3) SA 581 (SCA) at par 28). This means that the applicant must set out sufficient facts in the founding affidavit to disclose a cause of action. (*Motor Finance Corporation (Pty) Ltd v Jan Joubert and others* ⁵). In dealing with the nature of the evidentiary material to be placed before a court in relation to a consumer's over-indebtedness it was held in *Standard Bank of South Africa Ltd v Panyiotts* 2009 (3) SA 363 (WLD) at par 9 that:

Having regard to the wording of s 79, such proof must inevitably involve details of, inter-alia, the consumer's financial means, prospects and obligations. Financial means would include not only income and expenses, but also assets and liabilities. Prospects would include prospects of improving the consumer's financial position, such as increases, and, even, liquidating assets.

40. In this instance the evidentiary material placed before the magistrate was woefully inadequate. On the basis of the evidence placed before the magistrate the jurisdictional fact upon which the magistrate is entitled to exercise his discretion in terms of s 87 was not established. Accordingly, the order granted was unlawful.
41. The difficulty with the order, however, does not end there. As indicated hereinabove the magistrate re-arranged the first respondent's affairs in such manner as to require payment of a monthly amount of R289.15 over a 260 month period and ordered that interest would be reduced to 0%.
42. It is obvious from these figures that the re-arranged payments will not satisfy the amount outstanding to the applicant as at the date of restructuring. The clear effect of the re-arrangement order is that the first respondent, as consumer, will not meet all of his obligations to the applicant in terms of the credit agreement. Not only will the first respondent not be obliged to make payment of the full outstanding loan, the monthly payments do not even meet the requirement to reimburse the applicant for the monthly payment it is obliged to make on behalf of the first respondent in respect of credit insurance cover. The order plainly does not meet the essential purposes of the NCA as set out in s 3 (g) and (i) (cf. *BMW Financial Services SA (Pty) Ltd v Mudaly* 2010 (5) SA 618 (KZD); *Firststrand Bank Ltd v Adams and Another* 2012 (4) SA 14 (WCC)).

⁵ Unreported Judgment, Case no A629/2013, NGP, 14 June 2013

43. Apart from this, the magistrate also ordered that the first respondent's contractual obligations to pay interest on the outstanding balance of the loan be reduced from the fixed 17.5% to 0%.
44. Section 86(7)(c)(ii) confers no such power upon the Magistrates Court. A debt re-arrangement order has as its purpose the rescheduling or re-arrangement of the obligations of the consumer in such a manner as to enable the consumer to meet his/her/its obligations to the credit provider. It serves to mitigate the effect of over-indebtedness by making provision for payments within the existing means of the consumer and over an extended period. A re-arrangement order, does not, and cannot, extinguish the underlying contractual obligations. This much is plain from the wording of section 86 (7). The order reducing the first respondent's contractual obligation to pay interest on the outstanding balance of the loan is therefore *ultra vires* the NCA (*Firststrand Bank v Adams* (supra) at par 28; *SA Taxi Securitisation (Pty) Ltd v Lennard* 2012 (2) SA 456 (ECG) at paragraph 10).
45. A magistrate's court is a creature of statute. It only has the jurisdiction which is conferred upon it by statute. It exercises no inherent jurisdiction and can accordingly not adjudicate matters which fall outside of its expressly conferred jurisdiction and cannot grant orders, other than those it is expressly authorised to grant (*Ndamase v Functions 4 All* 2004 (5) SA 602 (SCA)).
46. In purporting to make the order the magistrate acted without jurisdiction. At common law such an order is null and void (*Master of the High Court (North Gauteng High Court, Pretoria) v Motala NO and Others* 2012 (3) 3 to 5 (SCA) at paragraph 12). Although the applicant seeks an order to the effect that orders made without jurisdiction are void *ab initio* and may be ignored, I do not consider that such an order is necessary in the present matter or that it is appropriate given the reach off the declaratory relief sought.

The order of 30 January 2015

47. In the light of the findings relating to the order of 4 February 2014 the order refusing rescission must necessarily be set aside. However it is necessary to address the further order made *mero motu* by the magistrate “reinstating” the contractual interest rate applicable to the credit agreement concluded with the applicant.
48. The magistrate had no jurisdiction to grant such an order, for the reasons already set out. It is however necessary to point out that apart from a lack of jurisdiction to make such order, the purported order is tainted by gross irregularity in as much as it purported to vary the terms of the re-arrangement order previously granted without having regard to the effect that the variation would have upon either the terms of the re-arrangement order or the consumer’s obligations to other credit providers.
49. The issue was not before the magistrate and he could not have applied his mind in the exercise of his discretion relating to the re-arrangement order and, accordingly, on this ground to the order falls to be set aside because it is tainted by gross irregularity.

Relief

50. It follows from what is set out above that the applicant is entitled to the review relief it seeks. The applicant has made out a compelling case for the granting of the further declaratory relief. In the papers it is pointed out that re-arrangement orders of the sort made in this matter are routinely made by magistrates throughout the country. In the circumstances a declaration to the effect that contractual interest rates agreed in a credit agreement may not be varied or reduced will serve to clarify the matter. I have already indicated however that I do not consider that it is appropriate to grant a declaration that orders of this sort made by the magistrate’s court may be ignored on the basis that they are void *ab initio*.
51. I therefore make the following order:

1. The order granted by the Third Respondent on 4 February 2014 in the Magistrate’s Court for the district of Port Elizabeth held at Port Elizabeth under case number

- 31018/13M in terms of s 87 of the National Credit Act 34 of 2005 re-arranging the obligations of the First Respondent unto his credit providers is set aside.
2. The order granted by the Third Respondent on 30 January 2015 in the same matter dismissing an application for rescission of the order referred to in paragraph 1 above and further *mero motu* varying the terms of the then re-arranged obligations of the First Respondent by re-instating a contractually agreed interest rate in terms of a credit agreement is set aside.
 3. It is declared that:
 - 3.1 A Magistrate's Court hearing a matter in terms of s 87 (1) of the National Credit Act, 34 of 2005 does not enjoy jurisdiction to vary (by reduction or otherwise) a contractually agreed interest rate determined by a credit agreement;
 - 3.2 A re-arrangement proposal in terms of s 86 (7) (c) of the National Credit Act that contemplates a monthly installment which is less than the monthly interest which accrues to the outstanding balance does not meet the purposes of the Act and a re-arrangement order incorporating such proposal is *ultra vires* the National Credit Act and a Magistrate's Court has no jurisdiction to grant such an order.

G. GOOSEN
JUDGE OF THE HIGH COURT

BESHE, J.

I agree.

N. G. BESHE
JUDGE OF THE HIGH COURT

Appearances:

For the Applicant
Mr. E. A. S. Ford SC
Instructed by Pagdens Attorneys