



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
DATE	SIGNATURE
21/1/2025	[Redacted Signature]

Case No. A369 / 2023

In the matter between:

MTHOKOZISI BLESSING SITHOLE

APPELLANT

and

**BENAY SAGER NCRDC2484
BMW FINANCIAL SERVICES (SOUTH AFRICA)
(PTY) LTD
DIRECT AXIS (SA) (PTY) LTD ON BEHALF OF
FIRSTRAND BANK LIMITED
RCS (PTY) LTD
FIRST NATIONAL BANK (FNB), A DIVISION OF
FIRSTRAND BANK LIMITED**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT**

JUDGMENT

NEUKIRCHER, J

[1] On 14 November 2023 the full panel of the National Consumer Tribunal (NCT) handed down judgment in an application brought by the appellant in terms of s165 of the National Credit Act 34 of 2005 (the Act), in which the appellant sought the rescission of a consent order granted on 26 August 2021. The NCT dismissed the application for rescission.

[2] Aggrieved by this decision, the appellant now approaches this court in terms of section 148(2)(b) of the Act which provides:

“Subject to the rules of the High Court, a participant in a hearing before a full panel of the tribunal may:

- (a) ...
- (b) appeal to the High Court against the decision of the tribunal in that matter, other than a decision in terms of section 138.”

[3] The facts of the application are not in dispute: on 4 February 2021 the appellants applied for debt review with the first respondent¹. As part of that application the appellant completed and signed certain documents, including:

- a) an application form (NCR Form 16);

¹ Who is the Debt Counsellor

- b) an agreement (the agreement) with first respondent as well as a company known as Debtfree Management Services²(DMS), and powers of attorney in respect of each of them³;
- c) a debit order form;
- d) an application checklist.

[4] The appellant duly completed and signed the documents, including the terms and conditions, on 4 February 2021. Paragraph 4 of the agreement contains the power of attorney provisions in respect of the first respondent which, inter alia, states:

"I hereby give Benay Sager ... Debt Counsellor for Debt Busters permission to do the following:

- a. ...
- b. To negotiate a debt restructuring plan with my credit providers.
...
- f. To sign the application for a Consent Order, funding affidavit, or other legal documents as necessary on my behalf should debt Busters opt to bring my debt counselling application before the National Consumer Tribunal (NCT) or a Magistrates Court.
- g. To appoint DMS to manage the legal services and legal application as it deems necessary to improve my ability to meet my monthly commitments to my creditors."

[5] The DMS agreement makes provision for a power of attorney, and these inter alia state:

² Which is a "legal processing company"

³ The respective powers of attorney are part of the terms and conditions of each agreement

"2. I hereby give debt free management services (DMS) permission to do the following:

- a. ...
- b. to apply to the Magistrates Court for a court order or the other National Consumer Tribunal [for] a consent order, according to the debt restructuring plan."

[6] According to the Debt Counseling Application (the application) completed by the appellant, he had eight creditors to whom he was paying a total of R42 704 monthly. As will be seen from the figures below, at the time the appellant approached the first respondent, he was over-indebted:

Nett monthly income	R71 000.00
Less monthly expenses	R34 820.00
Less Total Monthly Debt Obligations	R42 704.00
Deficit:	R -6 524.00

[7] However, through first respondent's negotiations with his creditors the appellant's total obligations were substantially reduced by more than half monthly. Most of the re-structured debts were repayable over a 60 month period.

[8] Armed with this, the first respondent (on behalf of and instructed by the appellant) applied to the National Credit Tribunal (the Tribunal) for a consent order.

[9] On 26 August 2021 the Tribunal made the following order (the order):

"The Tribunal, having considered the papers filed of record, is satisfied that the Applicant(s) and the Credit Provider(s) are parties to a debt re-arrangement facilitated by a Debt Counsellor:

1. In terms of section 86(7)(b) read with section 138(1) of the National Credit Act, Act 34 of 2005 ("the Act"), the following order is made:

1.1 the 8 repayment agreements between the consumer(s) and credit provider(s) are attached to this order and

1.2 the repayment agreements are confirmed as an order of the Tribunal in terms of section 150 of the Act ..."

[10] For two years the appellant did nothing to re-visit this order. This court was also not told whether or not the appellant had complied with its terms in the years since its grant. What we are told is that, for some unknown reason, the appellant consulted with his present attorney on 31 August 2023 at which time he was advised that the Tribunal had no jurisdiction to grant the order it did. The reason for this is that, because he was overindebted at the time the application was made, only the Magistrate's Court had jurisdiction to grant the consent order and the consent application should have been referred to the Magistrate's Court for a confirmation hearing.

[11] It was as a result of this advice that, on 19 September 2023, the appellant brought an application in terms of s165(1) of the Act to rescind the order granted two years prior.

[12] The grounds upon which the rescission was sought are the following:

- a) that the appellant was over-indebted when he applied for debt review;
- b) that, as a result, the first respondent did not have *locus standi* to apply for debt review given the provisions of s86(7)(b) of the Act, as read with s138(1);

- c) that, given this, the Tribunal has no jurisdiction to grant the consent order and it could only have been considered, and granted, by a Magistrates Court;
- d) that the consent order was granted in appellant's absence; and
- e) that, given the facts set out supra, the consent order was erroneously sought and erroneously granted.

[13] Although the appellant sought to argue – in his reply – in this appeal, that the s165(1) application could also resort under s165(1)(c)⁴, this is not the case brought by the appellant either *a quo* or in this appeal. The case that the appellant called the first respondent to meet was that the order was erroneously sought or granted in his absence. That is the case set out in the application and that is the case that was argued *a quo* and initially before us. It ill behoves the appellant to change his case in replying argument.

[14] This appeal was opposed by the first respondent. The first respondent raised three issues, which were also argued before us:

- a) that the appellant failed to comply with Rule 24A(1)⁵ and only launched the application two years after he became aware of the consent order;
- b) the provisions of s165(1)(a) have not been complied with in that:
 - (i) the order was neither erroneously sought nor erroneously granted;
and
 - (ii) the order was not granted in appellant's absence;

⁴ Ie that a court may vary or rescind its decision or order made or granted as a result of a mistake common to all the parties to the proceedings

⁵ Rules of the Tribunal

- c) the appellant seeks to impermissibly prematurely exit from the debt review process without following the correct procedure which, in this case, would be to pay any outstanding debt in full.

Rule 24(A)(1) and Section 165(1)

[15] The purpose of Act and its Rules becomes apparent when reading these provisions together. Whilst the Act provides for the causa of the application, the Rules set out the procedure.

[16] Section 165(1) provides:

“The Tribunal, acting of its own accord or on application by a person affected by a decision or order, may vary or rescind its decision or order-

- (a) erroneously sought or granted in the absence of a party affected by it;
- (b) in which there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission; or
- (c) made or granted as a result of a mistake common to all the parties to the proceedings.”

[17] Rule 24A states:

“24A Variation or rescission of Tribunal orders

- (1) An application for the variation of rescission of a Tribunal order must be made within 20 days of the date on which the applicant became aware of –
 - (a) the Tribunal order which was granted in the absence of the applicant;
 - (b) the ambiguity, error or omission; or
 - (c) a mistake common to the parties to the proceedings; or
 - (d) within such longer period as permitted by the Tribunal.

- (2) An application for rescission or variation in terms of section 165 must be made by way of Form TI.165.”

Re: Within 20 days

[18] Whilst it is unquestionably so that appellant “became aware of” the order on 6 October 2021 when first respondent notified him of its grant, it is not in dispute that he was only informed of the alleged possible irregularity in its grant when he consulted his attorney on 31 August 2023 – the rescission application was brought 19 days later.

[19] The NCT found that the appellant would only have become aware of the alleged error committed by the tribunal, when it was explained to him by his attorney. He then launched the rescission within the prescribed period of 20 days. In my view this approach is acceptable given the particular circumstances of the matter - it cannot be expected of a layperson to know the intricate technicalities of whether or not the Tribunal had jurisdiction to grant the order it did.

Re: erroneously sought or granted in the absence of

[20] In essence, the approach to a rescission on this ground is two pronged: the first question is whether the order was granted in the absence of the party affected by it; the second question is whether the order was erroneously sought or erroneously granted.

[21] The NCT found that s165(a) bears a “striking resemblance” to rule 42(1)(a) of the Uniform Rules of Court which states:

- “(1) The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary -

- (a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby...”.

[22] The NCT concluded that, bearing in mind this “striking resemblance” “(i)t is, therefore, reasonable to conclude that the legislators of the NCA must have intended for section 165(a) to have the same application in the law as that of Rule 42(1)(a)”. I agree with this conclusion.

[23] In *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State and Others* (Zuma)⁶, the court stated⁷:

“... the words “granted in the absence of any party affected thereby, as they exist in Rule 42(1)(a), exist to protect litigants whose presence was precluded, not those whose presence was elected”.

[24] The court also stated that it is not open to a litigant who seeks a rescission to obtain a re-hearing on the merits as the general principle is that once a court has pronounced a final order, it becomes *functus officio* and has no power to alter the order save under very narrow prescribed circumstances. In *Zuma*, the court then stated:

“[82] It is trite that orders of this Court are final and immune from appeal. They are, however, rescindable, and the Legislature has carefully augmented the common-law grounds of relief by expressly providing for narrow grounds of rescission by crafting rule 42. Narrow those grounds are, for good reason, for the very notion of rescission of a court order constitutes the exception to the ordinary rule that court orders, especially those of this Court, are final. By its nature the law of rescission invites a

⁶ (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263(CC) (17 September 2021)

⁷ At par 56

degree of legal uncertainty. So, to avoid chaos, the grounds upon which rescission can be sought have been deliberately carved out by the Legislature. It is true that:

"... whatever the position may have been ... there can no longer be any equitable need to interfere with the principle of finality of judgments ... :

'It should therefore no longer be necessary to seek adaptations to the common-law, arguably by uncomfortable and artificial contrivance, to address the sort of unhappy predicament that the applicants in this case find themselves in ... '

[W]hatever equitable need may in the past have been felt to exist for departing from the long-established principles of law to which I have referred, has now been more or less effectively dealt with by the legislature".

[25] And so the question is: was appellant "absent" as he contends? His argument is that as he was not present when the order was granted, it was granted in his absence. Whilst this is technically true, what it ignores is that he provided a written mandate to the first respondent and its attorneys to:

- a) sign the application "or other legal documents necessary" to bring his application for the consent order before the NCT⁸; and
- b) to apply on his behalf for the consent order in terms of the debt restructuring plan⁹.

[26] Thus, in my view, the appellant is in precisely the same position as every litigant who is represented by an attorney or advocate in an application in which he or she is cited as a party and who is not physically present in court when an order is granted against him – he is present in court by virtue of the fact that he is represented. The

⁸ Paragraph 4 supra

⁹ Paragraph 5 supra

fact that these were proceedings before the Tribunal does not derogate from that principle.

[27] My view on the appellant's "absence" is re-enforced, once again, in *Zuma*:

"[60] Accordingly, this Court found that the irregularity committed by the High Court, in so far as it prevented the parties' participation in the proceedings, satisfied the requirement of an error in rule 42(1)(a), rendering the order rescindable. Whilst that matter correctly emphasises the importance of a party's presence, the extent to which it emphasises actual presence must not be mischaracterised. As I see it, the issue of presence or absence has little to do with actual, or physical, presence and everything to do with ensuring that proper procedure is followed so that a party can be present, and so that a party, in the event that they are precluded from participating, physically or otherwise, may be entitled to rescission in the event that an error is committed. I accept this. I do not, however, accept that litigants can be allowed to butcher, of their own will, judicial process which in all other respects has been carried out with the utmost degree of regularity, only to then, *ipso facto* (by that same act), plead the "absent victim". If everything turned on actual presence, it would be entirely too easy for litigants to render void every judgment and order ever to be granted, by merely electing *absentia* (absence)."

[28] This being so, in my view, the order was not granted in the absence of the appellant. This ground must therefore fail.

Was the order erroneously sought or granted?

[29] The following are the relevant provisions of s86 of the Act which determine whether a debt counsellor may/should refer a debt re-arrangement agreement to the Tribunal or the Magistrate's Court for confirmation:

"(6) A debt counsellor who has accepted an application in terms of this section must determine, in the prescribed manner and within the prescribed time –

(a) whether the consumer appears to be over-indebted; and

(b) if the consumer seeks a declaration of reckless credit, whether any of the consumer's credit agreements appear to be reckless.

(7) If, as a result of an assessment conducted in terms of subsection (6), a debt counsellor reasonably concludes that –

(a) the consumer is not over-indebted, the debt counsellor must reject the application, even if the debt counsellor has concluded that a particular credit agreement was reckless at the time it was entered into;

(b) the consumer is not over-indebted, but is nevertheless experiencing, or likely to experience, difficulty satisfying all the consumer's obligations under credit agreements in a timely manner, the debt counsellor may recommend that the consumer and the respective credit providers voluntarily consider and agree on a plan of debt re-arrangement; or

(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.

(8) If a debt counsellor makes a recommendation in terms of subsection (7)(b) and –

- (a) the consumer and each credit provider concerned accept that proposal, the debt counsellor must record the proposal in the form of an order, and if it is consented to by the consumer and each credit provider concerned, file it as a consent order in terms of section 138; or
- (b) if paragraph (a) does not apply, the debt counsellor must refer the matter to the Magistrate's Court with the recommendation.”

Erroneously sought or erroneously granted

[30] In *Naidoo and Another v Matlala NO and Others*¹⁰ it was stated:

“... In general terms, a judgment is erroneously granted if there existed at the time of its issue a fact of which the judge was unaware, which would have precluded the granting of the judgment and which would have induced the judge, if aware of it not to grant the judgment.”

[31] And in *Daniel v President of the Republic of South Africa*¹¹ the Constitutional Court stated that:

“The applicant is required to show that, but for the error he relies on, this Court could not have granted the impugned order. In other words, the error must be something this

¹⁰ 2012 (1) SA 143 (GNP) at par 6

¹¹ [2013] ZACC 24 at paragraph 6

court was not aware of at the time the order was made and which would have precluded the granting of the order in question, had the Court been aware of it.”

[32] The NCT found

“32. The applicant, further, has not shown that a fact existed at the time that would have induced the tribunal member to refuse the granting of the order had been aware of it. The majority of judgments granted by the Tribunal in similar applications, consistently indicate that the Tribunal is of the view that a determination of an applicant’s over-indebtedness when applying for debt review, is not a bar to applying for a consent order, albeit that consent orders are often rescinded for various other reasons. On these grounds alone, the consent order cannot be rescinded. It is worth noting that the two judgments the applicant referred to in his submission each contain a dissenting judgment which held that a determination of a consumer’s over-indebtedness is not a bar to applying to the Tribunal for a consent order where all concerned parties have agreed to such an application.”

[33] In *More v Eugene Cilliers and Others*¹² the majority finding of the NCT was that a Tribunal does not have jurisdiction to consider applications for consent orders where the debtor is over-indebted. This determination is made by the debt counsellor at the time of the application, but before the letters to the creditors are sent to propose the debt re-arrangement, and certainly before the actual consent of the creditor to the proposal is obtained. Accordingly the majority of the NCT granted the rescission.

[34] The minority judgment in *More* however disagreed with the narrow view and literal interpretation of s86(7) of the Act. It argued that it is the outcome of the debt

¹² NCT/252500/2022/165(10 March 2023)

counsellor's determination of the consumer's over-indebtedness when the consumer applies for debt review¹³ that informs whether or not the debt counsellor may then refer the matter to the Tribunal or must refer the matter to the Magistrate's Court. However, the view was that:

- "4. One has to consider the practical application of this and wonder why the legislature would compel an already overindebted consumer to participate in what could be a costly legal proceeding in the Magistrate's Court but allow the "not over-indebted" consumer to enjoy a more cost-effective, voluntary administrative process where creditors are all in agreement."

[35] The minority then stated that the only explanation for the omission of the over-indebted consumer in the wording of s86(7)(b) and s86(8) of the Act is that it was an oversight on the part of the legislature. It stated that although the Tribunal is a creature of statute, in terms of s2(1) of the Act, the Tribunal must still interpret the Act in line with the purpose set out in s3¹⁴. As s3(i) provides for a consistent and harmonised

¹³ Either in respect of s86(6)(a) or s86(8)(b) of the Act

¹⁴ "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, by-

(a) promoting the development of a credit market that is accessible to all South Africans, and in particular to those who have historically been unable to access credit under sustainable market conditions;

(b) ensuring consistent treatment of different credit products and different credit providers;

(c) promoting responsibility in the credit market by-

(i) encouraging responsible borrowing, avoidance of over-indebtedness and fulfilment of financial obligations by consumers; and

(ii) discouraging reckless credit granting by credit providers and contractual default by consumers;

(d) promoting equity in the credit market by balancing the respective rights and responsibilities of credit providers and consumers;

(e) addressing and correcting imbalances in negotiating power between consumers and credit providers by-

(i) providing consumers with education about credit and consumer rights;

debt restricting system that prioritizes the eventual satisfaction of all the consumer's debt obligations, s86(8) should be interpreted in line with this purpose which is to find a cost-effective way to alleviate the over-indebtedness of a consumer in a way that his/her creditors consent to. Given this, there is no justification for preventing an over-indebted debtor from entering into a voluntary debt re-arrangement plan with his/her creditors.

[36] Thus, the minority found in light of this that "a direct and literal interpretation of the Act in this regard would result in absurdity and that a purposive interpretation should be applied". He found that s86(8) should have read as follows:

"(8) If a debt counsellor makes a determination in terms of section 86(7)(b) or (7)(c) and

(a) The consumer and each credit provider each enter into a voluntary debt re-arrangement plan, the debt counsellor must record the plan in the form of an order and if it is consented to by the consumer and each credit provider concerned, file it as a consent order in terms of section 138."

-
- (ii) providing consumers with adequate disclosure of standardised information in order to make informed choices; and
 - (iii) providing consumers with protection from deception, and from unfair or fraudulent conduct by credit providers and credit bureaux;
- (f) improving consumer credit information and reporting and regulation of credit bureaux;
- (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) providing for a consistent and accessible system of consensual resolution of disputes arising from credit agreements; and
- (i) providing for a consistent and harmonised system of debt restructuring, enforcement and judgment, which places priority on the eventual satisfaction of all responsible consumer obligations under credit agreements."

[37] Given this interpretation, he found that the order was not erroneously sought or erroneously granted and would have dismissed the rescission application.

[38] In *Khoza v Benay Sager t/a Debt Busters and Others*¹⁵, and again in a majority judgment, the NCT granted the rescission application. It found that the Tribunal has no authority to grant consent order in circumstances where the debt counsellor has made a determination that the debtor is over-indebted. The dissenting minority judgment was penned by the same member as in the *More* judgment, and on the same grounds.

[39] In the appeal before us, the same member who wrote the minority judgments in *More* and *Khoza* this time was the presider. It is therefore unsurprising that the present rescission application was refused.

[40] Here, the NCT stated that the majority of judgments have found that a finding by a debt counsellor that a debtor is over-indebted is not a bar to the grant of a consent order by the Tribunal, especially where all the parties have agreed to the grant of the order.

[41] The NCT likened the consent order to a compromise and stated that, in line with *Slabbert v MEC for Health and Social Development of Gauteng Provincial Government*¹⁶, that where there are no grounds¹⁷ to set aside a compromise agreement, a court has no discretion to do so.

[42] It also stated that s165 does not state that the NCT “must” vary or set aside an order – the section specifically uses the word “may” which vests it with a discretion. It

¹⁵ NCT/253293/2022/165 (11 March 2023)

¹⁶ (432/2016) [2016] ZASCA 157 (3 October 2016) para 7, 8 and 20

¹⁷ Such a iustus error or fraud

states, along the lines of the *More* and *Khoza* minority judgments, that the NCT is bound by the provisions of s 2(1) of the Act which provides that the Act must be interpreted in a manner which gives effect to the provisions of s3 of the Act. It then finds that there is “no justification to rescind an order based on consent by all parties to assist the applicant in alleviating his indebtedness. In this instance, rescinding such an order would be contrary to the purpose of the NCA and would likely result in undesirable consequences for the parties.”¹⁸

[43] Mr Bowles has argued that it is not necessary for this court to decide on the interpretation of s86(7)(a) as the NCT’s primary finding is contained in paragraph 39 of its judgment. In my view, the relevant conclusions of the NCT are the following:

“39. The applicant failed to prove that the consent order was granted in his absence and further that there was a fact, which had the Tribunal member been aware of, would have induced him to refuse the granting of the order. Furthermore, the applicant has not alleged or proven that there exists any fraud, error or mistake in the underlying compromise agreement which he entered into with his creditors. The first respondent acted accordingly on instruction from the applicant to create a voluntary debt re-arrangement plan to which all parties consented to and approached the tribunal to have it made a consent order. In doing so, the first respondent did not seek this order erroneously.

40. The Tribunal acted in line with section 138(1) by making the debt re-arrangement plan a consent order upon request to do so and, therefore, did not grant the order erroneously or in the applicant’s absence since all the parties were aware of the application. Rescinding the consent order would be contrary

¹⁸ Naidoo and Another v Matlala NO and Others 2012 (1) SA 143 (GNP) para 4

to the purpose of the NCA and would likely result in undesirable consequences for the parties.”

[44] I agree with the views expressed by the NCT set out supra. I also agree that the appellant has not alleged that the compromise agreement was tainted by an error: he takes sole issue with the grant of the order from which he greatly benefited when his repayments were reduced by more than fifty per cent.

[45] But even were I wrong on this, s165 provides that the NCT “may” vary or rescind its order. Thus, the NCT, and this court, has a wide discretion to grant or refuse a rescission application even were the requirements met. This discretion must be exercised judicially and in accordance with the purpose of the NCA which is, inter alia, 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, by inter alia providing for a consistent and harmonised system of debt restructuring, enforcement and judgment, which places priority on the eventual satisfaction of all responsible consumer obligations under credit agreements.¹⁹

[46] In my view, the restructuring of appellant’s debts is in line with the purpose of s3(i) of the Act and also alleviates his financial burden whilst ensuring that his debt obligations towards his creditors is fulfilled, albeit over a longer period.

[47] This being so, there are a number of factors which militate against the grant of this application:

¹⁹ Section 3(i) of the Act

- a) an order, especially one granted by consent, must evince a measure of finality. Even where it is susceptible to a rescission application it cannot be ignored that Rule 24A(i) envisages that the application be brought within 20 days of the date on which appellant became aware of it. This is in order to achieve the measure of certainty and finality for the parties that court orders provide;
- b) a court will also not exercise its discretion in favor of a rescission application if undesirable consequences would follow²⁰. In *casu* there are several consequences which militate against the grant of the relief sought by the appellant, the most important of which are:
 - (i) the application itself is devoid of any proper detail regarding the applicant's financial status at time of the initial application or now. He fails to set out how much of the debts he has repaid and the amounts still to be paid. He also fails to set out the reason that he approached his attorneys on 31 August 2023. All of this is relevant to the discretion that the NCT or the court exercises under s165;
 - (ii) there is no indication on these papers that, in fact, the Tribunal was not aware of the provisions of s86 of the Act and, therefore, no indication that the order was in fact erroneously sought or erroneously granted;
 - (iii) the parties would be restored to the *status quo ante*. Yet, had the appellant in fact been making the payments as he was obliged to

²⁰ Naidoo v Matlala at paragraph 4

do²¹, there is no indication whether those payments would have to be reversed and paid back to appellant, or whether they would be retained to reduce his indebtedness;

- (iv) the floodgates would open to disgruntled debtors who are tired of the long debt review process, to resile from it without paying off their debts in full.

[48] It is common cause that the NCA provides for only two methods for a debtor to end the debt review process him or herself ie by paying off the debt in full or via s165(1).

[49] In my view, given the above, the consequences of granting this appeal are indeed undesirable. Thus, on both legs of s165(1), this appeal must fail .

[50] There is no reason that the cost should not follow the result.

Order

Thus the order is:

The appeal is dismissed with costs.


B NEUKIRCHER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

²¹ There is no indication either way in the section 165(1) application

I agree and it is so ordered.



JJ STRIJDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

This judgment was prepared and authored by the judges whose names are reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 21 January 2025.

Parties' representatives

For the appellant	:	Adv J Marais
Instructed by	:	Campbell Attorneys
For the first respondent	:	Adv RG Bowles
Instructed by	:	VHT Attorneys
Matter heard on	:	26 November 2024
Judgment date	:	<u>21</u> January 2025