IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number:187667/2025
(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED
DATE 24 FEBRUARY 2026
SIGNATURE

In the matter between:

DENISE SHERIDON MARAJH APPLICANT

and

NATIONAL DEBT INTERVENTION (PTY) LTD RESPONDENT
(REG NO: 2022/580262/07)

SUMMARY**:** The applicant approached the Court after discovering that she and her late husband had been placed under debt review without her consent, without completing or signing the prescribed statutory application (Form 16), and without any court or consent order as required by the National Credit Act 34 of 2005 (NCA). Despite her express objection and refusal to proceed with debt review, the respondent listed her with credit bureaus as being under debt review and later required payment of a cancellation fee to “withdraw” the process.

The Court emphasized that debt review is a process initiated by the consumer and based on their consent, in accordance with section 86(1) of the NCA. A debt counsellor does not possess adjudicative authority and may not impose a binding debt review

without either an order from the Magistrate's Court pursuant to section 87 or a written consent order approved by all relevant credit providers.

The Court found that the respondent acted unlawfully by placing the applicant under debt review without complying with the statutory process and without judicial oversight. Such conduct was held to infringe the applicant's constitutional rights, including the right of access to courts (section 34 of the Constitution) and the right to lawful, reasonable and procedurally fair administrative action (section 33).

The judgment highlighted a broader regulatory risk in the debt review system, where the administrative documentation of debt review statuses might be conducted without an appropriate legal underpinning. This could lead consumers, particularly indigent and unrepresented ones, to incur legal costs to correct unlawful entries. The Court ordered that the judgment be sent to the National Credit Regulator for consideration and to take any action it may deem appropriate.

The judgment reaffirms that debt counsellors must operate strictly within the boundaries of the NCA and that judicial oversight is essential when consumers' rights and credit status are significantly impacted.

JUDGMENT

MOGALE AJ

Introduction

[1] This application was presented before this Court on the unopposed roll of 13 January 2026. The applicant requests that this court set aside the debt review proceedings instituted by the respondent on behalf of the applicant and her late husband on the basis that they are *void ab initio,* as the applicant never consented to or authorised the respondent to institute such proceedings on her behalf.

[2] In the alternative, the applicant seeks an order declaring that she is not over-indebted as contemplated in section 87(1)(a) of the National Credit Act[1] ("the NCA")[2], and directing that the debt review process be set aside.

[3] The applicant was married in community of property to her late husband. The relief sought necessarily extends to his share of the joint estate. The applicant's husband passed away on 22 February 2025.

The parties

[4] The applicant is an adult female trainer residing in No 4[...] F[...], 2[...] C[...] Road, Constantia Kloof, Johannesburg.

[5] The respondent is National Debt Intervention (Pty) Ltd, (Registration number 2022/580262/07), a company registered in terms of the Companies Act of South Africa, with its registered address at 4[...] W[...] Road, Plumstead, Cape Town. The respondent is a registered debt counsellor.

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[1] Act 34 of 2005.

[2] Referred to as ("the Act).

Applicable law

[6] Rule 31(2)(a) of the Uniform Rules of Court[3] empowers the plaintiff to apply for a default judgment when the time period within which the defendant could serve and file his notice of intention to defend has passed without the respondent notifying the plaintiff of his intention to defend the matter. In this matter, the respondent was served with the applicant's notice of motion, founding affidavit, and notice of set down by the sheriff on 11 November 2025. The respondents failed to enter an appearance to defend within the prescribed period; therefore, the applicant is entitled to apply for an order to be granted on default.

[7] Regarding the application for a default judgment, I am of the opinion that this court is enjoined to satisfy itself that the relief sought is lawful and supported by the evidence. It is my view that a default judgment is not granted as a matter of course, particularly where constitutional and statutory rights are implicated.[4]

[8] To properly consider the matter before me, I have requested that the applicant's legal representative submit a concise summary of the arguments concerning the relevant law and the legal principles supporting the application. On 16 January 2026, the applicant duly complied with this request, and I commend the efforts and assistance rendered in this regard.

Factual background

[9] On 24 January 2025, the applicant received a telephone call from an individual who identified herself as "Roxy" and stated that she was acting on behalf of the respondent. The applicant was informed that the respondent could provide financial assistance.

[3] *Rule 31(2)(a) provides that:* "Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit.".

[4] *Maharaj v Barclays National Bank Ltd* 1976(1) SA 418 (A).

[10] Based on the understanding that the respondent would evaluate her financial situation and potentially provide assistance with debt consolidation, the applicant furnished personal and financial information regarding herself and her husband.

[11] The applicant subsequently recognized that the procedure initiated was not debt consolidation but rather debt review. She promptly notified the respondent of her decision not to be subjected to debt review and declined to complete or submit the prescribed application as contemplated in section 86(1) of the NCA.

[12] Although the applicant did not complete or submit any application to the respondent, the applicant received an email dated 30 January 2026 from the respondent requesting the particulars of the applicant's late husband[5].

[13] The applicant replied to the email on the same day and stated as follows:

> "I am only providing my husband's details which are Aubrey Marajh, id number 7[...] because you have requested it. Please note carefully that he does not want to be placed under debt review. He does not have debt attached to his name; his credit score is excellent. Please confirm that you will not place Aubrey Marajh under debt review[6]."

[14] Notwithstanding this, the respondent proceeded to list both the applicant and her husband as under debt review and to include their names with the credit bureau[7].

[15] The applicant contacted the respondent again on 31 March 2025, following her husband's death, to request her removal from debt review. The respondent provided the applicant with Form 17 (a *withdrawal from debt review*[8]), which states as follows:

> "The notice serves to notify you that the debt counsellor has suspended provision of service due to non-cooperation by the Consumer. The Debt counsellor remains on record

[5] Caselines 1-5 Annexure DM3.
[6] Caselines 1-6 Annexure DM4.
[7] Annexures DM5 and DM6.
[8] Annexure DM9.

as a debt counsellor. The applicant paid a withdrawal or cancellation fee of R8 350 000."

Issues for determination

[16] The court must consider the following:

a. The nature and scope of debt review under the NCA;
b. Whether a consumer may be placed under debt review without a court or consent order;
c. Whether the debt review flag may be withdrawn administratively; and
d. The constitutional implications, including rights of access to court (section 34) and just administration action (section 33).

The Debt Review Scheme under the NCA

[17] Debt review, or debt counselling, is a formal, legal process initiated by the NCA to assist over-indebted consumers in managing their debt obligations. Its aim is to provide a structured, legal pathway for consumers struggling to make ends meet to repay their debts in a manageable manner without defaulting or losing their assets[9].

[18] The process takes place when the consumer takes the initiative to approach a debt counsellor for debt review, as highlighted by section 86(1), providing that:

> "*A consumer may apply to a debt counsellor in the prescribed manner and form to have the consumer declared over-indebted*". This process is consumer-initiated and consent-based."

[19] The applicant must apply to a debt counsellor for placement under debt review by completing and signing Form 16. The form includes providing the consumer with the written request to be placed under debt review. The consumer is also requested to provide the debt counsellor with personal and financial information. Upon the consumer's completion and submission of Form 16, the debt counsellor notifies the consumer's credit providers and credit bureaus that the consumer has applied for debt

[9] Section 3 of National Credit Act 34 of 2005.

review by submitting Form 17.1.

[20] The debt counsellor is then obliged to undertake an investigation into the consumers' financial means by utilizing Form 17.2. Upon the completion of the investigation, the debt counsellor is required to make the following recommendation as envisaged by section 86(7) of the Act,

a. That the consumer is not over-indebted. Upon such finding, the debt review process is rejected.

b. The consumer is not over-indebted but is experiencing financial difficulties that could easily lead to over-indebtedness. In such circumstances, the consumer may proceed with the debt review process.

c. In the event that the consumer is over-indebted, the debt counsellor may issue a recommendation to the Magistrate's Court for an order declaring the consumer over-indebted and for an order re-arranging the consumer's credit obligations.

[21] Section 87 provides that the Magistrate's Court may make an obligation that-

(1) *if a debt counsellor makes a proposal to the Magistrate's Court in terms of section 86(8)(b), or a consumer applies to the Magistrate's Court in terms of section 86(9), the Magistrate Court must conduct a hearing and, having regard to the proposal and information before it and the consumer's financial means, prospects and obligations, may-*

(a) Reject the recommendation or application as the case may be; or

(b) Make-

(i) An order declaring any credit agreement to be reckless, and an order contemplated in section 83(2) or (3), if the Magistrate's Court concludes that the agreement is reckless;

(ii) An order re-arranging the consumer's obligations in any manner contemplated in section 86(7) (C) (ii); or

(iii) Both orders contemplated in subparagraph (i) and (ii)

(1) The National Credit Regulator may not intervene before the Magistrate's Court in a matter referred to it in terms of this section.

[22] In the matter of *Stander v Bates and Another*[10], the National Tribunal Consumer court held that:

> "*The first respondent did not clearly explain the various steps in the process and the legal consequences of applying for debt review. She was also not afforded the opportunity to review and understand all documents provided to her prior to signing. Therefore, her initial consent does not constitute informed consent, and the process should not have proceeded. When approaching the first respondent, she did so in good faith, trusting that she would receive honest, transparent and professional assistance tailored to her situation. She relied on the first respondent to guide her through the process with the necessary clarity and integrity that the law requires of a registered debt counsellor"*

[23] This process deviates from the debt consolidation procedure as retained by the applicant during a telephonic discussion with an individual referred to as "Roxy". The applicant's founding affidavit explicitly states that the procedure for placing her under debt review was not adhered to, nor was an order issued by the Magistrate's Court to initiate debt review. Several procedural steps and the legal implications of applying for debt review were not adequately explained to her. When the applicant engaged with the respondent, she did so in good faith, trusting that professional assistance would be provided for debt consolidation.

The subsequent question is how the applicant was placed under debt review without complying with the NCA's provisions.

Placement under debt review without the order of the court?

[10] (NTC/ 367710/2024/141(1)(b) [2025] ZANCT 33 (13 May 2025) at para 11.

[24] In terms of section 86(7), a court order can place the applicant under debt review. Section 86(8)(a) allows debt rearrangement without a court order only if the consumer and all the credit providers accept the proposal in writing as a consent order. The debt counsellor failed to comply with these provisions when placing the applicant under debt review.

In *More v Eugene Cilliers and Others*[11]**,** *it was emphasised that jurisdiction to impose binding debt relief does not vest in administrative bodies acting unilaterally.*

[25] Initiating a binding debt review without a court order or consent order constitutes a significant constitutional violation. Section 34 of the Constitution affirms the right to resolve disputes through courts or independent tribunals. A debt counsellor is an administrative body, not a judicial officer; therefore, they have no power to impose debt review[12]. In my view, the debt counsellor's failure to involve judicial oversight undermines the constitutional objectives.

[26] This was also dealt with in *Nedbank Ltd v National Credit Regulator*[13]*, the Supreme Court of Appeal confirmed that debt counsellors have no adjudicative powers and that binding debt rearrangements require judicial oversight.*

Constitutional Analysis

[27] Section 34 of the Constitution entrenches the right of every person to have legal disputes adjudicated by a court or an independent and impartial tribunal. By acting in a manner that conclusively affected the applicant's legal position without recourse to a court process, the respondent effectively usurped this constitutional safeguard.

[28] The listing of a consumer under debt review constitutes administrative conduct that produces immediate and binding legal consequences beyond the internal processes of the administrator. As such, this conduct is subject to the requirements of section 33 of the Constitution and must meet the standards of legality, rationality, and procedural

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[11] NTC/252500/2022/165 (10 March 2023).
[12] Nedbank Ltd v National Credit Regulator 2011(3) SA 581 (SCA)
[13] 2011(3) SA 581 (SCA).

fairness.

[29] The respondent's unilateral decision to place the applicant under debt review amounted to a substantive infringement of the applicant's right of access to courts[14]. By determining the applicant's rights and obligations without judicial involvement or oversight, the respondent acted in a manner inconsistent with constitutional principles.

[30] The submission of a debt review status to credit bureaus is an administrative act with significant external legal consequences. This action is required to be lawful, reasonable, and procedurally fair[15]. The respondent's conduct falls short of these constitutional and administrative law requirements and is therefore unlawful.

[31] Applying the proportionality analysis articulated in *Ferris v FirstRand Bank Ltd*[16], the Constitutional Court confirmed that measures under the NCA must be proportionate and consistent with constitutional protections. The rule of law mandates that statutory powers be exercised within explicitly defined boundaries. Allowing debt counsellors to impose debt review solely through administrative recording, which undermines the separation between administrative assistance and judicial determination, and is therefore constitutionally unacceptable.

Termination of Debt Review

[32] The respondent provided the applicant with Form 17 (a withdrawal from debt review)[17], which states as follows to complete:

> "The notice serves to notify you that the debt counsellor has suspended provision of service due to non-cooperation by the Consumer. The Debt counsellor remains on record as a debt counsellor. The applicant paid a withdrawal or cancellation fee of R8 350 000."

[33] Section 88(3) states as follows:

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[14] Section 34 of the Constitution.
[15] Section 33 of the Constitution.
[16] 2014 (3) SA 39 (CC).
[17] Caselines Annexure DM9.

"(3) subject to section 86(9) and (10), a credit provider who receives notice of court proceedings contemplated in section 83 of 85, or notice in terms of section 86(4)(b)(i), may not exercise or enforce by litigation or other judicial process any right or security under that credit agreement until-

(a) The consumer is in default under the credit agreement; and

(b) One of the following has occurred;

(i) An event contemplated in subsection (1)(a) through (c)[18];

(ii) The consumer defaults on any obligation in terms of a re-arrangement agreed between the consumer and credit provider or ordered by a court or the Tribunal."

[34] For the respondent to provide the applicant with Form 17, which is purported to be a form to be completed to withdraw from debt review, contravenes NCA. Neither the NCA nor its Regulations provide for the withdrawal or suspension of a consumer's debt review process. To exit debt review, NCA provides that the application must be made to a Court, and the applicant must prove that they are no longer over-indebted and can afford to repay the debt in terms of the original agreement[19].

[35] In my view, the respondents' failure to obtain a court order authorizing the applicant to exit debt review results in the debt review flag remaining permanently on the applicant's credit record. This omission, in my opinion, compromises and undermines the objectives of the NCA, which was enacted to establish a balance between safeguarding consumers from reckless credit and over-indebtedness, and

[18] S88(1) A consumer who has filed an application in terms of sec 86(1), or who has alleged in court that the consumer is over-indebted, must not incur any further charges under a credit facility or enter into any further credit agreement, other than a consolidation agreement, with any credit provider until one of the following events has occurred:

(a) *The debt counsellor rejects the application, and the prescribed time period for direct filing in terms of* s86(9) has expired without the consumer having so applied;

(b) The court has determined that the consumer is not over-indebted, or has rejected a debt counsellor's proposal or the consumer's application; or

(c) The court having made an order, or the consumer and credit providers having made an agreement re-arranging the consumer's obligation, all the consumer's obligations under the credit agreement as re-arranged are fulfilled, unless the consumer fulfilled the obligations by way of a consolidation agreement.

[19] *Van Vuuren v Roets No* 2019 (6) SA 506 (GJ).

ensuring the effective operation of the credit market and enforcement of credit agreements.

[36] In *Pheko v Lamara and Another*[20], the Tribunal held that without a proper authorized application for debt review by the applicant, any determination of over-indebtedness is null and void. Similarly, the subsequent flagging of the applicant's status as "being in debt review" is without force and effect. The Tribunal, therefore, finds that the applicant's status is incorrectly reflected on the credit bureau reports and stands to be corrected.

[37] According to Form 17, completed by the applicant and the payment of fees amounting to R8,350.00, the debt review was merely suspended and not withdrawn. This record shall remain permanently on the applicant's credit record. I find that the flagging of the applicant's status as in debt review is inaccurately reflected on the credit bureau report and must be corrected without delay, as it constitutes a violation of section 86(1).

Systematic Regulatory Concern

[38] I find it unlawful for the respondent to place the applicant under debt review without a proper assessment, a court order, or the applicant's written consent, and without complying with the legal steps required by the NCA. As a result, this unlawful conduct prompted this court to determine whether there is a material legal gap and regulatory risk in the debt review system that debt counsellors exploit, thereby allowing them to place consumers into debt review without a proper legal basis.

[39] The evidence is clear that the legal gap arises from the manner in which the statutory process is implemented and enforced, particularly when debt review status is recorded administratively. When the respondent entered the applicant's name into the debt review system without the court order or the applicant's consent, they contravened the statutory processes set out by section 86(1) of the NCA. It is clear that the credit

[20] (NCT/312494/2024/141(1)(b) [2024] ZANCT 42 (3 October 2024).

bureau unlawfully disregarded the procedures and enrolled the applicant without a court order or the applicant’s court order confirming that over-indebtedness had been established.

[41] It is my view that this places the responsibility on indigent and unrepresented consumers to seek redress in court at their own expense to remedy unlawful administrative actions. Such practices undermine the NCA's objectives and distort the balance it seeks to strike between consumer protection and credit market integrity.

Evaluation

[42] This matter exposes a troubling and recurring practice within the debt review system: the placement of consumers under debt review through purely administrative action, without a valid application, without informed consent, and without the judicial oversight expressly contemplated by the NCA. Such conduct is inconsistent with both the text and the purpose of the Act.

[43] The evidence before this Court demonstrates that the applicant never completed or signed Form 16, never applied to be placed under debt review, and expressly objected to both herself and her late husband being subjected to debt review. Notwithstanding this, the respondent proceeded to list the applicant with credit bureaux as being under debt review, thereby materially impairing her contractual, proprietary, and economic rights.

[44] In the absence of a court order granted in terms of section 87, or a valid consent order as contemplated in section 86(8)(a), a debt counsellor has no authority to impose a binding debt review. Any such placement is unlawful and void ab initio. The debt counsellor’s role is investigatory and advisory; it is not adjudicative. Judicial power remains vested in the courts.

[45] I consider this conduct to constitute an unlawful infringement of the applicant’s right of access to courts as stipulated in section 34 of the Constitution, as well as her

right to just administrative action under section 33. The designation of a consumer as being under debt review carries significant implications and must not be carried out without lawful authority and appropriate procedural compliance.

[46] This Court is further concerned by the practice of purporting to “withdraw” or “suspend” debt review through the use of Form 17, accompanied by the charging of cancellation or withdrawal fees. The NCA makes no provision for a debt counsellor to unilaterally terminate debt review. Absent a court order declaring that a consumer is no longer over-indebted, the debt review flag remains operative, thereby trapping consumers, particularly indigent and legally unrepresented consumers, in an indefinite state of restriction.

[47] The facts of this case illustrate a material regulatory gap, not in the wording of the NCA, but in its implementation and enforcement. That gap allows debt counsellors to exploit administrative processes, record debt review statuses with credit bureaux, and shift the burden onto consumers, often those least able to afford legal representation, to approach courts to undo an unlawful act they never consented to in the first place.

[48] The objectives of the NCA, as set out in section 3, require a balance between consumer protection and the integrity of the credit market. That balance is fatally undermined when disadvantaged consumers are placed under debt review without due process and are thereafter required to incur legal costs to restore their status.

[49] In order to give proper effect to the constitutional and statutory scheme, this Court is of the view that the following measures are necessary to protect vulnerable consumers:

a. The National Credit Regulator must strengthen oversight and enforcement against debt counsellors who place consumers under debt review without a signed application, proper assessment, or court or consent order;

b. Credit bureaux must be required to verify the existence of a valid court order or consent order before recording or maintaining a debt review flag against a consumer's profile;

c. The NCR should issue binding guidelines clarifying that a debt review status may not be recorded solely on the basis of a debt counsellor's unilateral notification;

d. Mechanisms must be developed to enable indigent and unrepresented consumers to challenge unlawful debt review listings without the necessity of instituting costly court proceedings, including expedited Tribunal or regulatory intervention;

e. Consideration should be given to legislative or regulatory reform to prevent the indefinite persistence of debt review listings where no valid court process has occurred.

[50] This Court accordingly finds that the respondent acted unlawfully and in contravention of the NCA by placing the applicant and her late husband under debt review without compliance with the prescribed statutory process, without consent, and without judicial oversight. Therefore, the debt review proceedings instituted by the respondent should be set aside, and the applicant is declared not to be over-indebted for purposes of section 87(1)(a) of the National Credit Act.

[51] I have decided that it will be appropriate to instruct the Registrar to forward a copy of this judgment to the National Credit Regulator for their review and any necessary action within their legal powers.

Order

[52] The following order is made:

1. The debt review proceedings instituted by the respondent against the applicant and her late husband are declared unlawful and are hereby set aside.

2. The applicant is declared not to be over-indebted for purposes of section 87(1)(a) of the National Credit Act 34 of 2005.
3. The respondent is ordered to remove the applicant's debt review listing from all credit bureaus.
4. The respondent is ordered to pay the Applicant R8 350 00 in respect of the cancellation fee.
5. The Registrar is directed to forward a copy of this judgment to the National Credit Regulator for its consideration and any action it deems appropriate.
6. No order as to costs.

K J MOGALE

Acting Judge of the High Court, Pretoria,

Gauteng Division

Delivered: 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 uploading to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 24 February 2026.

Date of hearing: 13 January 2026

Date of the judgment: 24 February 2026

Appearances

For the Applicant: Adv J A VAN WYK

Instructed by Nixon and Collins Attorneys
advjavanwyk@gmail.com

For the Respondent: No appearance