

**IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION**

Case number: **NCT/394950/2025/141(1)(b)**

In the matter between:

HELEN MARGARET SHAW

APPLICANT

And

**KAMANI JOSEPH (NCRDC3027)
NATIONAL CREDIT REGULATOR**

FIRST RESPONDENT
SECOND RESPONDENT

Coram:

Ms N Maseti	- Presiding Tribunal member
Mr S Hockey	- Tribunal member
Adv C Sassman	- Tribunal member

Date of hearing	- 27 October 2025
Date of judgment	- 6 November 2025

(Last documents received on 30 October 2025)

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is Helen Margaret Shaw (the applicant). The applicant is a consumer, as defined in section 1 of the National Credit Act 34 of 2005 (NCA). At the hearing, the applicant represented herself.
2. The first respondent is Kamani Joseph (the first respondent). The first respondent is a registered debt counsellor with registration number NCRDC3027. At the hearing, the first respondent represented herself.
3. The second respondent is the National Credit Regulator (NCR), an organ of the state and a juristic person established in terms of section 12 of the NCA to regulate the

consumer credit market and ensure compliance with the NCA. The NCR did not oppose this application.

TERMINOLOGY

4. A reference to a section or form in this judgment refers to a section or form contained in the NCA and its Regulations.

APPLICATION TYPE

5. This is an opposed application in terms of section 141(1)(b), in which the applicant, with leave granted by the Tribunal, seeks redress against the first respondent. The applicant alleges that the first respondent failed to perform her statutory duties as a debt counsellor adequately.

BRIEF BACKGROUND

6. The applicant applied for debt review with the first respondent on 13 February 2020. The first respondent determined that the applicant was over-indebted and created a debt restructuring proposal, which the applicant agreed to. However, when submitted to the applicant's creditors for approval, she was unable to obtain consent from all creditors. Accordingly, the first respondent applied to the Magistrates' Court for an order in terms of section 86(7)(c).
7. Standard Bank, one of the applicant's creditors, opposed the court application, and due to too many counteroffers from the applicant's remaining creditors, the first respondent withdrew the application on 7 July 2021. The first respondent submits that she attempted to refile a new application in June 2022; however, the applicant stopped making monthly payments later that year.
8. The first respondent is opposing the application. Although she does not dispute all the applicant's allegations, she submits that when the applicant stopped making her monthly payments, she effectively prevented the first respondent from proceeding to put a debt restructuring plan in place and obtain a debt restructuring order from a court.
9. The applicant is seeking an order for the first respondent to be held accountable for her conduct and for the applicant's removal from debt review.

THE APPLICANT'S SUBMISSIONS

10. The applicant submitted that she started paying her creditors according to the first respondent's debt restructuring proposal on 6 March 2020. She was required to pay legal, administration and restructuring fees. For the remainder of 2020 and throughout

2021, the applicant continued to receive telephone calls from her creditors demanding payment. In April 2021, the applicant received an email from the first respondent indicating that Standard Bank had opposed the court application and was requesting an additional amount of R2 500.00, more than what she had been paying monthly. Although Standard Bank had opposed the application in December 2020, the first respondent failed to communicate this to the applicant at that time.

11. In November 2021, the applicant received confirmation that some of her creditors had begun terminating the debt review process, and the first respondent indicated that it required a higher monthly instalment to satisfy the remaining creditors. At that stage, the applicant requested a full history of all creditors, offers and payments made. However, to date, the applicant has not received sufficient details from the first respondent regarding her payment transactions.
12. On 24 February 2022, the applicant was still receiving collection telephone calls from her creditors and requested a face-to-face meeting with the first respondent. Although the meeting took place, the first respondent was not present, and instead, her office administrator attended the meeting. At the meeting, the applicant made another request for all the information regarding her payments made up until that point, but it was not provided. On the same day, the first respondent requested the applicant to sign a new power of attorney, which she did. On 8 March 2022, the applicant agreed to the increased payment request made by Standard Bank. She agreed to the request under duress because she was determined to finalise the matter.
13. On 26 April 2022, the applicant sent another email to the first respondent requesting a detailed statement of all payments she had made. The first respondent sent her a text message with balances. The applicant only received statements from the payment distribution agent, Hyphen, but not from the first respondent or her creditors.
14. On 9 June 2022, the first respondent requested a new signed confirmatory affidavit and the applicant's new bank statements. Both were sent to the first respondent. The original confirmatory affidavit was also delivered to the first respondent.
15. After still not receiving any information from the first respondent, the applicant approached the NCR, who advised her to liaise with the first respondent. Although she did, she still has no idea if payments were made to her creditors. At this point, it was clear that there was still no debt restructuring plan in place, despite her having made monthly payments. The applicant then decided to lay a formal complaint with the NCR,

and on 7 October 2022, suspended payments to Hyphen. By that point, the applicant had already paid R110 000.00, but her debt balances had increased by R80 000.00.

16. The Form 17.1, 17.2 and the debt restructuring proposal were not served on all the applicants' creditors. Furthermore, the applicant did not sign the confirmatory affidavit used in the first Magistrates' Court application. The appended signature is not that of the applicant. The first respondent sent email correspondence to the incorrect email address intended for Standard Bank. The affidavit drafted by the first respondent for the second Magistrates' Court application contains many errors. For example, it states that the applicant has two dependents, but she only has one.
17. On 23 April 2025, the NCR issued a notice of non-referral. The first respondent's conduct has left the applicant in limbo for five years, as the entire process was handled poorly. The applicant is now in a position where she can pay her creditors herself and requests that the debt review flag be removed from her credit profile.

THE FIRST RESPONDENT'S SUBMISSIONS

18. The Forms 17.1 and 17.2 were sent to the applicant's creditors, and the first respondent has proof of service. The Magistrates' Court application was postponed several times, and eventually, the Magistrate requested that the first respondent withdraw the application due to the submission of numerous counteroffers from the applicant's creditors.
19. In June 2022, the applicant accepted her creditors' counteroffers. The first respondent drafted a new application but was unable to file it because she required a new confirmatory affidavit from the applicant. On 6 July 2022, the first respondent emailed the applicant requesting a confirmatory affidavit, but it was not received. Thereafter, in October 2022, the applicant stopped making payments.
20. The applicant was aware of what was taking place regarding the counteroffers and court application. The first respondent's staff communicated with her frequently. Standard Bank continued to oppose the matter because it wanted a higher monthly instalment. They eventually terminated the process, and the applicant was left with five other creditors.

CONSIDERATION OF THE EVIDENCE

21. Section 86(6)(a) places a statutory duty on a debt counsellor to determine whether a consumer who has applied for debt review appears to be over-indebted. Section 86(7)

outlines the steps the debt counsellor must take once a determination is made. In terms of section 86(7)(a), if the determination is that the consumer is not over-indebted, the application must be rejected. In terms of section 86(7)(b), if the consumer is not over-indebted but is experiencing, or likely to experience, difficulty in satisfying all his or her financial obligations under every credit agreement, the debt counsellor may recommend that the consumer and the respective credit providers voluntarily consider and agree on a debt re-arrangement plan. In terms of section 86(7)(c), if the consumer is over-indebted, the debt counsellor may issue a proposal recommending that a Magistrate restructures the consumer's debt.

22. Section 86(8)(a) provides for a debt counsellor to make an application to the Tribunal for a consent order in terms of section 138(1), where the consumer is not over-indebted but is likely to experience financial difficulty. Such an application may be made with the consumer's consent, and where all credit providers have accepted the debt counsellor's proposed debt restructuring proposal. However, since the applicant's creditors rejected the first respondent's proposed debt restructuring proposal, the obligation was on the first respondent to proceed with an application in terms of section 86(7)(c).
23. The evidence before the Tribunal is that the first respondent complied with her statutory obligations under the NCA up until she withdrew the court application and then failed to put a revised debt restructuring proposal in place. This failure meant that the applicant did not benefit from the legal protection afforded to consumers as envisaged under sections 86(10)(b) and 88(3). The applicant was left vulnerable to her creditors despite having applied for debt review. The Tribunal is persuaded that the applicant initially co-operated as much as was required, but that the first respondent failed the applicant and caused her distress and financial prejudice.
24. At the hearing, the first respondent conceded that she should have done more to put a revised debt restructuring plan in place with the applicant's remaining creditors after Standard Bank had terminated. She further conceded that she could have done more to obtain the applicant's new confirmatory affidavit, which she required to file a new court application. To date, the applicant remains under debt review more than five years later, without a debt restructuring order from the Magistrates' Court or a consent order from the Tribunal being in place. The first respondent has not complied with her statutory obligations and her conditions of registration as a debt counsellor.
25. Section 52(5)(c) prescribes that a registrant, such as the first respondent, must comply with her conditions of registration. General Condition A2 of the first respondent's

conditions of registration as a debt counsellor specifies that she is required, in all instances, to act professionally and reasonably in providing debt counselling services to consumers in a manner that is timely, fair and does not bring the NCR or debt counselling into disrepute.

26. The Tribunal does not have jurisdiction to authorise the applicant's release from the debt review process or the removal of the listing on the credit bureaus while she is under debt review. This is so simply because such a remedy cannot be found within the four corners of the NCA. In *Van Vuuren v Roets and Others*,¹ the Court was tasked with determining whether a High Court had jurisdiction to release a consumer from the debt review process and confirmed that no interpretation of the NCA could support such a notion. Instead, the Court laid out the remedies available to a consumer to exit the debt counselling process.
27. The Court held that a consumer who has applied for debt review but was not yet the subject of a Magistrates' Court order in terms of section 87 may, together with the proposal of the debt counsellor, present any additional facts to the Magistrate to bring about a rejection of the proposal, thereby releasing the consumer from the process. The Court further held that where a Magistrate has already granted a debt restructuring order, the only way for the consumer to exit the process is by obtaining a clearance certificate under section 71. Under section 71(3), the Tribunal may order a debt counsellor to issue a clearance certificate to a consumer, but such an order can only be made if the consumer has complied with the requirements for a clearance certificate as prescribed in section 71(1). The applicant has not proven that those requirements have been met in this case.
28. At the hearing, the applicant confirmed that she has not been paying her creditors since October 2022, and there is no reason to believe that she is no longer indebted to them. In a case where a consumer remains in need of debt review but is no longer satisfied with the services of a particular debt counsellor, the NCR Withdrawal Guidelines² provide for consumers to transfer to a new debt counsellor. The debt review process does not start anew, and the receiving debt counsellor must continue from where the previous debt counsellor left off. This option remains available to the applicant in this case.

¹ *Van Vuuren v Roets and Others* (37407/2018) [2019] ZAGPJHC 286; [2019] 4 All SA 583 (GJ); 2019 (6) SA 506 (GJ) (3 September 2019) at paragraphs 54.2 and 55.2.

² 2021 at paragraph 12.

29. The Tribunal finds that the first respondent acted with a disregard for the applicant's consumer rights and failed to facilitate the debt review process in line with the statutory requirements and her conditions of registration. In doing so, the first respondent contravened section 52(5)(c), read with General Condition A2 of her conditions of registration as a debt counsellor. The contravention is declared prohibited conduct and warrants the imposition of an administrative fine as a punitive measure.
30. Section 150(i) empowers the Tribunal to make any appropriate order in relation to prohibited conduct to give effect to consumers' rights. Section 150(c) empowers the Tribunal to impose an administrative fine on a respondent who engaged in prohibited conduct. Section 151(3) outlines the factors the Tribunal must consider when determining an appropriate fine. These are listed and discussed under separate subheadings below.

The nature, duration, gravity, and extent of the contravention

The evidence shows that the contravention is serious. The applicant was a victim of the first respondent's lackadaisical approach to her statutory obligations.

Any loss or damage suffered as a result of the contravention

Although the applicant has been under debt review for more than five years, she is unable to enjoy the benefit of the legal protection and peace of mind afforded to consumers under the process.

The behaviour of the first respondent

The first respondent acted with complete disregard for consumer rights. The evidence proves that she had full knowledge of her requirements as a debt counsellor and willingly chose not to comply with them.

The market circumstances in which the contravention took place

The first respondent's conduct illustrates that the market within which the contraventions occurred is one in which consumers place their trust in debt counsellors and do not expect to be misled or exploited by them. These consumers are often not fully aware of their rights relating to debt counselling and are vulnerable to such exploitation.

The level of profit derived from the contravention

The applicant did not provide evidence of the level of profit derived by the first respondent. However, any fees paid by the applicant resulted in a profit for the first respondent.

The degree to which the first respondent has co-operated with the NCR and the Tribunal

The evidence before the Tribunal is that the first respondent co-operated with the NCR's investigation and filed an answering affidavit with the Tribunal to present her version.

Whether the first respondent has previously been found in contravention of the NCA

The Tribunal is unaware of any prior investigations or enforcement action instituted against the first respondent.

31. Regarding the abovementioned factors, the factual evidence, and the conduct displayed, it is in the interests of justice for an administrative fine to be imposed on the first respondent. Regarding the quantum of the administrative fine, section 151(2) provides that an administrative fine imposed may not exceed the greater of 10% of the first respondent's annual turnover during the preceding financial year or R1 000 000.00 (one million rand). Without knowing the first respondent's annual turnover, the Tribunal can still impose a fine limited to a maximum of R1 000 000.00 (one million rand).
32. The Tribunal finds that a fine of R25 000.00 (twenty-five thousand rand) will be appropriate in this instance.

CONCLUSION

33. The Tribunal finds that the first respondent has contravened section 52(5)(c) read with General Condition A2 of her conditions of registration as a debt counsellor. The contravention amounts to prohibited conduct and warrants the imposition of an administrative fine as a punitive measure.
34. The Tribunal does not have the requisite jurisdiction to grant the applicant's release from debt counselling, nor has she proven to have met the requirements for a clearance certificate to be issued.
35. The Tribunal is persuaded that the relationship between the applicant and the first respondent has deteriorated significantly and that it would be in the interest of justice for the applicant to be transferred to a new debt counsellor who will be able to assess her current level of over-indebtedness and take the necessary steps to assist her in alleviating her indebtedness.

ORDER

36. Accordingly, the Tribunal makes the following order:

36.1 The first respondent has contravened section 52(5)(c) of the NCA, read with General Condition A2 of her conditions of registration as a debt counsellor;

36.2 The first respondent's contravention of section 52(5)(c) read with General Condition A2 of her conditions of registration as a debt counsellor is declared prohibited conduct;

36.3 Within sixty calendar days of the issuing of this judgment, the first respondent is ordered to pay the amount of R25 000.00 (twenty-five thousand rand) into the National Revenue Fund referred to in section 213 of the Constitution³, the details of which are as follows:

Bank: Nedbank
Account Holder: Department of Trade, Industry and Competition
Account type: Current Account
Branch Name: Telecoms and Fiscal
Branch code: 198765
Account number: 126 884 7941
Reference: NCT/394950/2025/141(1)(b) and the name of the person or business making the payment;

36.4 The second respondent is ordered to facilitate the transfer of the applicant to a new debt counsellor within thirty calendar days of the issuing of this judgment; and

36.5 There is no cost order.

(signed)

Adv C Sassman

Tribunal member

Presiding Tribunal member Ms N Maseti and Tribunal member Mr S Hockey concur.



³ Constitution of the Republic of South Africa, Act 108 of 1996.