



CONSTITUTIONAL COURT OF SOUTH AFRICA

Moshomo Levin Kubyana v Standard Bank of South Africa Ltd

CCT 65/13

Date of hearing: 7 November 2013
Date of judgment: 20 February 2014

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today the Constitutional Court handed down judgment in a matter regarding a credit provider's obligations under the National Credit Act (Act) to notify a consumer of his or her default before approaching a court to enforce a credit agreement.

In 2007 Mr Kubyana and Standard Bank entered into an instalment sale agreement for the purchase of a motor vehicle. Mr Kubyana failed to make regular payments and fell into arrears. In 2010 Standard Bank sent a notice in terms of section 129 of the Act to him, indicating that he was in arrears and that it intended to approach a court for debt enforcement. The notice was sent by registered post to the branch of the Post Office which Mr Kubyana had chosen. Although two notifications were sent to his home requesting that he collect his registered mail, he never did so. Five weeks later the notice was returned to Standard Bank uncollected.

The High Court found that Standard Bank had fulfilled its obligation to bring the section 129 notice to Mr Kubyana's attention. Standard Bank was therefore entitled to enforce its debt against Mr Kubyana, who was ordered to settle the amount outstanding under the instalment sale agreement and to return the motor vehicle.

The Constitutional Court upheld the decision of the High Court and found in favour of Standard Bank. Mhlantla AJ found that, under section 129 of the Act, a credit provider wishing to enforce a credit agreement must deliver a notice to a consumer setting out the consumer's default and drawing the consumer's attention to his or her rights. This is an essential component of the Act's efforts to achieve non-litigious resolution of disputes. In order to effect delivery, the credit provider must take those steps that would bring the notice to the attention of a reasonable

consumer. When a consumer has elected to receive notices by way of post, a credit provider must prove (i) dispatch of the notice by way of registered mail; (ii) that the notice reached the correct branch of the Post Office; and (iii) that the notification from the Post Office requesting that the consumer collect the section 129 notice was sent to the chosen address. If a credit provider has taken these steps it will generally have discharged its obligations unless, in the circumstances, the section 129 notice would still not have come to the attention of a reasonable consumer.

Jafta J wrote separately on the interpretation of section 129(1) of the Act and in order to clarify what was previously said about that provision by the Constitutional Court in its earlier case of *Sebola v Standard Bank* [2012] ZACC 11.

Both Mhlantla AJ and Jafta J concluded that the Act does not allow consumers to frustrate the delivery of section 129 notices by ignoring notifications from the Post Office. Standard Bank had done all that was required of it by the Act. Despite having gone through a full trial process, Mr Kubyana failed to provide an explanation for why he did not respond to the notifications from the Post Office. There was therefore no evidence before the Court showing why it was reasonable for Mr Kubyana not to have taken receipt of the section 129 notice.

Moseneke ACJ, Cameron J, Dambuza AJ, Madlanga J and Van der Westhuizen J concurred in the judgments of both Mhlantla AJ and Jafta J; Froneman J and Skweyiya J concurred in the judgment of Mhlantla AJ; and Nkabinde J and Zondo J concurred in the judgment of Jafta J.

The Constitutional Court granted leave to appeal but unanimously dismissed the appeal with no order as to costs.