



CONSTITUTIONAL COURT OF SOUTH AFRICA

Mashilo Shadrack Sebola and Another v Standard Bank of South Africa and Others

**Case No.: CCT 98/11
[2012] ZACC 11**

**Date of Hearing: 14 February 2012
Date of Judgment: 7 June 2012**

MEDIA SUMMARY

The following explanatory note is provided to assist 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 case about the notice that must be given by a credit provider to the consumer or debtor, in the event of default, before resorting to court proceedings under the National Credit Act.

Section 129, read with section 130 of the Act, requires credit providers, before taking legal proceedings to recover debts, to provide consumers with a notice advising them of their right to refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court, or ombud, to resolve any dispute under the agreement.

The main question was whether the statute demanded that the consumer actually receives this written notice before the creditor may start legal proceedings to recover the debt, whether it is enough for the credit provider to simply prove that the notice was sent to the debtor's chosen address, or whether some other method of drawing the default to the notice of the consumer is sufficient.

Mr and Mrs Sebola entered into a home loan agreement with Standard Bank which specified a post office box in North Riding, Johannesburg, to which letters, statements and notices may be delivered. When they fell into arrears, Standard Bank's attorneys sent the section 129 notice to the chosen address.

However, the Sebolas never received the notice. It had been erroneously diverted to the Halfway House Post Office. Unaware of this, Standard Bank took default judgment against the Sebolas and obtained a writ of execution against their home.

The Sebolas asked the High Court to rescind the judgment on the basis that they had not received the notice or the summons and had not been afforded the opportunity to resolve the dispute outside court.

Both the High Court and the Full Court of the High Court refused to rescind, ruling that the Act did not require actual receipt of the notice and that it was enough for the Bank to show that it had sent the notice to the consumer's chosen address.

In this Court the Sebolas argued that the Act's provisions must be constitutionally interpreted to give effect to the protections envisioned in the Act. Standard Bank urged the Court not to decide the issue, as there had been no proper ventilation of the constitutional issues before any of the lower courts.

The Socio-Economic Rights Institute of South Africa (SERI), the National Credit Regulator (NCR) and the Banking Association of South Africa (BASA) were admitted as friends of the Court.

The majority of the Court, in a judgment penned by Cameron J (with whom Yacoob ADCJ, Froneman J, Khampepe J, Maya AJ, Nkabinde J, Skweyiya J and van der Westhuizen J concurred), found that the Act required the credit provider to aver and prove that the notice was delivered to the consumer. The Court did not accept that the notice needed to come to the attention of the consumer, but held instead that the Act required the credit provider to prove delivery of the notice.

The credit provider should ordinarily show delivery of a notice by proving (i) registered despatch to the address of the consumer and (ii) that the notice reached the appropriate post office for delivery to the consumer.

If, however, the consumer contends that the notice was not received, the court must establish whether the credit provider has complied with the terms of the Act. If not, the Act requires the matter be adjourned for the credit provider to take the steps directed by the court to enable the consumer to exercise her rights.

The Bank had not proved that notice reached the post office chosen by the Sebolas. Indeed, the notice had not reached that post office. The application for rescission was therefore granted.

In a separate judgment, Zondo AJ (with whom Mogoeng CJ and Jafta J concurred) agreed with the order proposed by Cameron J, but for different reasons. In Zondo AJ's view, the credit provider had to make the consumer aware of the consumer's default and the non-litigious options of dispute resolution which section 129 stipulates. His view is based on the common law principles relating to delivery of notices, judicial interpretations of statutes with similar provisions and a construction of the statute as a whole with a special emphasis on its purposes and section 129(1)(a). In his view the interpretation attributed by Cameron J will disadvantage people who do not have access to an effective and efficient postal service.