

**IN THE NATIONAL CONSUMER TRIBUNAL
HELD VIA TEAMS**

Case Number: **NCT/240141/2022/149(1)**

In the matter between:

KERRY STEVENS

APPLICANT

And

LOT 115 WENTWORTH INVESTMENTS CC T/A

RBS PAWNBROKERS

1ST RESPONDENT

NATIONAL CREDIT REGULATOR

2ND RESPONDENT

Coram:

Prof K Moodaliyar - Presiding Tribunal Member

Adv S Mbhele - Tribunal Member

Mr C Ntsoane - Tribunal Member

Date of Hearing: 30 September 2022

JUDGMENT AND REASONS

THE PARTIES

1. The Applicant is Kerry Stevens, an adult female person ("the Applicant" or "Ms Stevens"). At the hearing, the Applicant represented herself.
2. The First Respondent is Lot 115 Wentworth Investments CC t/a RBS Pawnbrokers ("the First Respondent"), a closed corporation duly registered and incorporated in terms of the company laws of the Republic of South Africa (Registration Number:

1994/040822/23) and a previously registered credit provider under registration number NCRCP1413 with its registered offices situated at 441 Bluff Road, Durban, KwaZulu- Natal.

3. At the hearing, the First Respondent was represented by Adv Stuart Humphrey instructed by GM Parkers Attorneys. The legal representation, however, was not properly before us and he did not participate in the hearing save for an explanation regarding the service of documents.
4. The Second Respondent is the National Credit Regulator (“the Second Respondent”) a statutory body established by section 12 of the National Credit Act, 2005 (“the NCA”) with its principal address at 127 15th Road, Randjiespark, Midrand, Johannesburg, Gauteng.
5. At the hearing, the Second Respondent was represented by its Senior Legal Advisor, Ms Leanne Schwartz (“Ms Schwartz”).

APPLICATION TYPE

6. This is an application in terms of Section 149(1) of the Act for interim relief, which can be sought *“at any time, whether or not a hearing has commenced into a complaint, a complainant may apply to the Tribunal for an order in respect of that complaint, and the Tribunal may grant such order if-*
 - (a) There is evidence that the allegations may be true; and*
 - (b) An interim order is reasonably necessary to-*
 - (i) Prevent serious, irreparable damage to that person; or*
 - (ii) Prevent the purposes of this Act from being frustrated.*
 - (c) The respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and*
 - (d) The balance of convenience favours the granting of the order”.*
7. In this application, the Applicant, seeks urgent interim redress against the First Respondent and requests that the First Respondent, who has held her car as security due to a credit agreement with a third party, should return the car to her.

HEARING IN DEFAULT

8. At the hearing the matter was unopposed. The First and Second Respondents did not file answering affidavits opposing the application.
9. Counsel for the First Respondent indicated that although they were not opposing the matter, it only became apparent to them the day before the hearing, in correspondence between Ms Schwartz and Mr Parker that the matter set down today was an urgent interim matter and not the main application initiated by the Second Respondent. He was unsure at this stage, what relief Ms Stevens was seeking from the First Respondent.
10. The Tribunal is grateful to Ms Schwartz for her guidance through the Applicant's service attempts in this matter.
11. The Tribunal was satisfied that the application was adequately served on the First and Second Respondents and proceeded to hear the application on a default basis.

BACKGROUND

12. A complaint was lodged with the Second Respondent on or about 26 August 2021. The complaint was lodged by Ms Stevens.
13. Ms Stevens alleged that a person known to her as Ms Rochelle Stockland ("Ms Stockland"), who had borrowed money from her multiple times, asked Ms Stevens to use her car as security for a loan that Ms Stockland entered into with the First Respondent.
14. A credit agreement was entered into between Ms Stockland and the First Respondent.
15. No credit agreement was entered into between Ms Stevens and the First Respondent, nor was an agreement provided setting out the terms and conditions of the agreement.

16. As the owner of the car, Ms Stevens signed no documents. Ms Stevens further alleged that despite multiple requests, the First Respondent did not provide her with documentation relating to the credit agreement.
17. Ms Stevens states that without the use of her car, her transportation to work has been affected and she is in deep financial and emotional distress.
18. Ms Stevens has requested that the Tribunal grants this urgent interim application for the return of her vehicle.

THE HEARING

19. At the hearing, the Applicant stated that Ms Stockland borrowed the Applicant's car for an agreed two-week period and for the purpose of using it as surety for a loan for Ms Stockland.
20. The Applicant stated that unbeknown to her, the car was instead used in a credit agreement transaction that Ms Stockland had with the First Respondent.
21. Ms Stevens stated that she did not sign any papers when she handed over the car to Ms Stockland and she was never shown the pre-agreement documents when she requested to see them.
22. Ms Stevens stated that she had been without her car since 19 April 2021. She is having difficulty getting to and from work as she has to rely on lifts from friends and Uber taxis. She is in dire financial straits and her work relationship is suffering. She stated that getting to work is beginning to affect her job.
23. Ms Stevens wants the return of her car as soon as possible and is not prepared to wait for the outcome of the main matter¹ which is set down for 13 October 2022.

¹Under case no: NCT/233166/2022/141.

ISSUES TO BE DECIDED

24. The Tribunal must decide whether the Applicant is entitled to the return of her car by the First Respondent and whether this urgent interim application should be granted.
25. The practice guidelines require the applicant, in an urgent application to set out explicitly the circumstances which render the matter urgent. More importantly, the applicant must state the reasons why she cannot be afforded substantial redress at a hearing in due course.
26. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of the absence of substantial redress in the application in due course.
27. It is, therefore, important to note that the rules require the absence of substantial redress for any matter to be considered urgent. Whether an applicant will not obtain substantial redress in an application in due course in respect of this matter will be determined by the facts of her case.

CONSIDERATION OF MERITS

28. Upon consideration of the merits, it is possible that Ms Stockland deceived Ms Stevens regarding the period and reasons for borrowing the car. Ms Stockland was not before us to state otherwise.
29. The main matter is to be held in a few days. Ms Stevens has been without her car since April 2021. She has not properly indicated when this urgency arose.
30. In the matter of *SA Taxi Securitisation (Pty) Ltd v Chesane, Andries Rabohadi* “The function and purpose of an interim attachment order is to protect the leased goods against deterioration and damage and to keep them in safekeeping until the case between the parties has been finalised. Its purpose is not to enforce remedies or obligations under the credit agreement and the remedy does not form part and parcel

of the debt enforcement process envisaged in the NCA. *[See in this regard J M Otto The National Credit Act Explained para 44.4. See also the unreported judgment in S A Taxi Securitisation (Pty) Ltd v H W Young Case No. 10249/2008 (CPD). Compare though in a different context Absa Bank Ltd v De Villiers² (sic)].*³

31. The car is currently in possession of the First Respondent, and it will be preserved as such pending the outcome of the proceedings in the main matter.
32. In the main matter, if successful, the Second Respondent has prayed that the car is returned to Ms Stevens.
33. When urgency is an issue, the primary investigation should be to determine whether the applicant will be afforded substantial redress at the hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent.
34. The Applicant strongly argued financial prejudice in her case but never dealt with the issue of an absence of substantial redress in the pending application by the Second Respondent.
35. Ordinarily, possible financial prejudice does not entitle an applicant to any relief sought before the Second Respondent's application is heard.
36. The Applicant has delayed by almost 18 months after the car was pawned to the First Respondent before bringing this urgent interim application.
37. At this stage, the Tribunal is unconvinced that Ms Stevens will suffer prejudice if she cannot wait for the outcome of the main matter.

ORDER

38. Accordingly, for the reasons set out above, the Tribunal makes the following order:

² 2009 (5) SA 40 (C) at paras [11]-[14] and [42].

³ South Gauteng High Court case no: 26382/2009.

38.1 The application for an interim order is dismissed.

38.2 There is no order as to costs.

DATED ON THIS 7 OCTOBER 2022.

K MOODALIYAR
PRESIDING MEMBER

Mr C Ntsoane (Tribunal Member) and Adv S Mbhele (Tribunal Member) concur.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

Ground Floor, Building B

Lakefield Office Park

272 West Avenue, Centurion, 0157

www.thenct.org.za

