

Concourt ruling hailed as victory for debtors

SABA

STANDARD Bank intends to abide by a Constitutional Court ruling yesterday that defaulting debtors must receive proper notice before creditors take action against them.

"We welcome the decision and the directions provided by the Constitutional Court, which we intend to abide by," spokesman Erik Larsen said in a statement.

He said the judgment fully explained what was required of creditors who chose to serve Section 129 notices (default of payment) by way of registered mail. Mashilo Shadrack Sebola and his wife successfully applied to the Constitutional Court for rescission of a default judgment

Banks to abide by requirement to prove delivery of default notices

on the basis that they had not received a notice from their creditor.

Standard Bank, the creditor, had issued a notice advising them of their rights, including the option to refer the agreement to a debt counselor when they were in default of a credit agreement. However, the notice did not reach the address to which it was sent, and they did not respond.

Justice Edwin Cameron handed down the Constitutional Court's judgment yesterday, stating that leave to appeal was granted, that the appeal had succeeded, that the order of the High Court was set aside and that the

application for rescission was granted, with costs. Standard Bank must also pay the Sebolas' bank costs.

The judgment read: "Where the credit provider posts the notice, proof of registered dispatch to the address of the consumer, together with proof that the notice reached the appropriate post office for delivery to the consumer, will, in the absence of the contrary indication, constitute sufficient proof of delivery."

If in contested proceedings a consumer stated that a notice did not reach him or her, the court had to establish the truth.

The Banking Association of

SA, which acted as a friend of the court, was pleased with the ruling and called it practical.

"The fear that we had was the court would order that documents would have to be served personally, but the court didn't go so far," spokesman Nicky Lala-Mohan said.

He welcomed the decision that the court required only proof of delivery of the notice.

He said the ruling would not make much difference to creditors' current procedures, only in the tracking of the notices, and many already complied with this. The Socio-Economic Rights Institute of SA (Seri), which also

acted as a friend of the court, said the court had stood up for consumers' rights through its ruling.

"The Constitutional Court today acted to protect debtors who default on their credit agreements, handing down judgment in the Sebola case," Seri said.

Osmond Mngomezulu, an attorney at Seri, said: "We welcome the court's comprehensive and meticulous judgment."

"Seri intervened in this case in order to ensure the consumers are properly informed of their rights and were given a reasonable opportunity to exercise them. The judgment achieves this end."

In response to the ruling, FNB said the Constitutional Court had brought final clarity to the delivery of these notices.

Spokesman Steve Higgins said the judgment would not have a major impact on FNB's collection procedures.

He said FNB already forwarded notices by registered post and he believed the bank's costs would not increase due to the ruling.

"It will add another step, being the 'track and trace' printout from the Post Office," said Higgins.

"We will however review our processes and ensure full compliance with the judgment of the Constitutional Court."

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