

High Court rules in favour of the NCR on common law set-off

The High Court in Johannesburg has ruled in favour of the National Credit Regulator (NCR) against Standard Bank that the common law set-off does not apply to credit agreements subject to the National Credit Act (NCA). This follows an application for a declaratory order brought by the NCR against Standard Bank seeking legal clarity on the effect of section 124 of the NCA on the common law set-off.



Nomsa Motshegare, chief executive officer of the NCR

The NCR had sought an order from the High Court that the common law set-off has been superseded by section 124 of the NCA. The common law set-off is applied when two persons owe each other and the debts are extinguished by setting them off against each other. The banks apply this by transferring funds deposited into consumers' accounts to settle debts on credit agreements without the consumers' authorisation.

The court ruled that the purpose of section 124 is to effect a break from the common law and to oust the continued application of the common law set-off in parallel with section 124. It also ruled that section 124 excludes the operation of the common law set-off in all credit agreements that are regulated by the NCA.

"The NCR welcomes this judgment as it protects consumers from financial difficulties caused by the arbitrary transfer of funds from their accounts by banks," says Nomsa Motshegare, chief executive officer of the NCR.

"Banks should obtain permission from consumers before transferring funds from consumers' accounts to pay amounts due under credit agreements," she adds.

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