# OFFICE OF THE JUDGE PRESIDENT

**GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA**
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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
2019 -02- 26
GD-PRET-036
GRIFFIER VAN DIE HOOGGEREGSHOF SUID-AFRIKA,
GAUTENG- AFDELING,
PRETORIA


Date: 26 February 2019

In the matters of:-

**Nel // Roets and Others (Case number 37404/2018); and**

**Jansen van Vuuren // Roets and Others (Case number 37407/2018)**

**JUDGE PRESIDENT'S PRACTICE DIRECTIVE IN TERMS OF SECTION 14(1)(a) OF THE SUPERIOR COURTS ACT, ACT 10 OF 2013**

1. This is a Directive issued in terms of Section 14(1)(a) of the Superior Courts Act, Act 10 of 2013, read with Section 173 of The Constitution of the Republic of South Africa. The purpose of the Directive is to make provision for the constitution of a Full Court, to sit at first instance to hear and determine the aforementioned applications to be declared not over-indebted and to clarify the position and practices pertaining to similar applications. The further purpose of the Directive is, *inter alia*, to set timelines for the filing and service of further process regarding the further conduct of the applications in the heading as well as the sitting of the Full Court.

Background:-

2. On Wednesday, 19 September 2018, two unopposed applications were heard wherein the following relief was sought by the applicants: a) that the debt counsellors finding the over indebtedness be reversed / cancelled and/or terminated; b) that the applicants be declared no longer over-indebted and no longer under debt review; c) that the credit bureau be informed to remove the debt listing pertaining to the applicants and to change their status; d) that the debt counsellor provide the Form 17.W confirming that the applicants have been declared no longer over-indebted.

3. The relief sought is in light of the fact that the applicants have applied for debt review (in accordance with the National Credit Act 34 of 2005) to a debt counsellors and the debt counsellors, having found the applicants to be over-indebted, subsequently informed such affected creditors and credit bureaus of the over-indebtedness of the applicants but before such applications for debt review was confirmed by a Magistrates Court. The applications were referred to the Full Court,

pursuant section 14(1)(b) of the Superior Courts Act. The reason why this was done appears from the written judgment of that date in the two matters identified in the heading of this directive.

4. Similar relief was sought and granted, in three previous judgments, in this Division, being Magadze v ADCAP; Ndlovu v Koekemoer [2016] ZAGPPHC 1115 (2 November 2016), Mokubung v Mamela Consulting and Others [2017] ZAGPPHC 462 (14 June 2017) and Manamela v Du Plessis t/a Debt Safe and Others [2017] ZAGPPHC (21 June 2017).

5. Conflicting judgments were handed down in various Divisions, one which was reported, in regard to the competency of the High Court to hear and grant relief in respect of applications of this nature. See Less v Vosloo and Others [2017] ZAKZPHC 58 (22 September 2017), Du Toit v Benay Sager (NCRD2484) t/a Debt Buster and Others [2017] ZAWCHC 141 (17 November 2017) and Phaladi v Lamara and Another 2018 (3) SA 265 (WCC).

The Legal Issues raised: -

6. The following issues have been raised and are to be determined by the Full Court:

   a. Is a High Court able to make an order confirming that an applicant is no longer over-indebted, where no valid declaration of over-indebtedness is before Court?

   b. Where fresh facts arise since a debt counsellor's notification to all credit providers and every registered credit bureau of the consumer's application for debt review, or after the assessment and conclusion that a consumer appears to be over-indebted, and new facts demonstrate material change in the circumstances of a consumer causing such consumer to no longer be over-indebted, is the High Court the forum of first instance that the consumer should approach to provide an order to rectify his credit status with credit providers and credit bureaus?

   c. Is the relief sought consistent with the scheme of the National Credit Act?

   d. The concepts of 'over-indebtedness' (including that of financial difficulty falling short of 'over-indebtedness' contemplated by s 86(7)(b)) and the attendant remedy of 'debt review' within the meaning of the National Credit Act are statutory creations. How they work is governed entirely by the National Credit Act. In the absence of a challenge to their constitutionality, are the Courts' powers delineated by these provisions?

   e. Does section 71 of the National Credit Act afford an adequate remedy in the circumstances to expunge the record that the applicants were in debt review?

   f. Is the only remedy at disposal of the applicants' the limited relief provided for in terms of s 71 of the National Credit Act and is it further limited to be sought in the manner set out there in?

   g. Would the Court in exercising its powers in terms of section 21 of the Superior Courts Act to grant such relief, be inappropriate considering the environment regulated by the National Credit Act?

Directive: -

7. Therefore, in terms of section 14(1)(a) of the Superior Courts Act 2013, Act 10 of 2013, I hereby constitute a Full Court for purposes of hearing and disposing of the matters referred to above as well as any other matter that may be raised for determination by the Full Court.

8. The Chief Registrar is therefore hereby directed to:

   a. Cause this Directive to be issued out of the office of the Chief Registrar for publication and placement on the notice board in the High Court foyer, Pretoria and Johannesburg;

   b. Serve copies of this Directive via electronic email communication on:

      i. The parties involved in the matter;
      ii. The Minister of Trade and Industry;
      iii. The National Credit Regulator;
      iv. The South African Reserve Bank;

   c. Service of this Directive shall further be effected as follows:

      On the Minister of Trade and Industry:

      i. By service on the State Attorney, Pretoria.
      ii. By e-mail to the Minister.

      On the National Credit Regulator, The South African Reserve Bank: by email

9. For purposes of service and filling of any process envisaged in this directive such service and filing shall be by electronic email communication provided that the appropriate proof of delivery shall be provided. For purpose of filing with the Court the following email address shall be used – NWalkinshaw@judiciary.org.za

10. Copies of papers already filed in the matter referred to the Full Court will be provided to any party requiring same but such request should be communicated to the Office of the Judge President via the email address provided in this directive by no later than 14:00 on 7 March 2019.

11. The parties mentioned in paragraph 8 and / or any interested party who wishes to be admitted as *amicus curiae* in this matter, are directed to serve and file their applications, setting out the basis why they wish to be so admitted as well as the legal arguments/ heads of argument, they intend to advance in support of their applications by 14:00 on 21 March 2019, via email communication to the email address provided.

12. The applicants mentioned in the heading of this directive shall indicate their consent or opposition/objection to any application for admission as *amicus curiae* on or before 29 March 2019. In the event of an opposition/objection, the basis thereof must be provided as well as such legal argument as the Applicants wish to advance in this regard.

13. The applicants in the matters referred to the Full Court are directed to serve and file their legal argument/heads of argument, in support of their cases on or before 14h00 on 22 March 2019, at the Office of the Judge President by email communication to the email address provided. The other parties who shall have received consent as well as granted consent to be admitted as amici, must serve and file their legal argument/heads of argument by 14h00 on or before 28 March 2019.

14. Thereafter, the further conduct of the matter shall be case-managed by the Judge President or any other Judge so designated by the Judge President. The case management shall include directions on the indexing and pagination of the papers.

15. The date on which the Full Court will hear the matters referred to it is 25 and 26 April 2019.

16. All applications to be declared not over-indebted which are impacted by the issues referred to the Full Court must be postponed sine die pending the Judgment by the Full Court in the matters referred to it.

Sincerely,

**D MLAMBO**
**JUDGE PRESIDENT OF THE GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA**