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IN THE HIGH COURT OF LESOTHO
(Commercial Court Division)

HELD AT MASERU	**CIV/APN/399/2016**
In the matter between:	
MALIFELILE BUSISISWE NTOI	**APPLICANT**
And	
NETLOANS LESOTHO (PTY) LTD	**1ST RESPONDENT**
THUSONG FINANCIAL SERVICES	**2ND RESPNDENT**
BLESSINGS FINANCIAL SERVICES	**3RD RESPONDENT**
MAKHULONG MULTI FINANCE (PTY) LTD t/a BLUE FINANCIAL SERVICES	**4TH RESPONDENT**
STANDARD LESOTHO BANK	**5TH RESPONDENT**
POSTBANK	**6TH RESPONDENT**
ACCOUNTANT GENERAL	**7TH RESPONDENT**
NATIONAL TREASURY	**8TH RESPONDENT**
CENTRAL BANK OF LESOTHO	**9TH RESPONDENT**
ATTORNEY GENERAL	**10TH RESPONDENT**

Neutral Citation: Malifelile Busisiwe Ntoi v Netloans and 9 others [2022] LSHC 321 COM (2nd December, 2022)

CORUM: MATHABA J

Heard on: 26nd September 2022

Judgment delivered on: 2nd December 2022

Summary

Loan agreement – whether costs and interest levied on the loan are unlawful – Applicability of Money Lenders Act 1989 as amended on the loan agreement – The Act applies to money Lenders – loan transaction governed by Financial Institutions Act 2012 and Financial Institutions (Credit-only Institutions) Regulations 2010 – Each law intended to apply to the segment it was enacted for – the Acts calling for harmonious interpretation – there is no inconsistency between the Money Lenders Act 1989 and the 2010 Regulations.

Annotations:

Statutes

Financial Institutions Act No. 23 of 1973

Financial Institutions Act No. 6 of 1999

Financial Institutions Act No.3 of 2012

Financial Institutions (Credit-Only Institutions), Regulations 2010

Financial Institutions (Credit Only and Deposit Taking Micro – Finance Institutions) Regulations, 2014

Interpretations Act No. 19 of 1977

Money Lenders (Amendment) Act N0. 6 of 1993

Money Lenders Order No. 25 of 1989

Cited Cases:

Lesotho

Afrisure Finance and Another v Lechaka and Others Makhulong Multi Finance (Pty) Ltd t/a B. Blue Financial Services v Nona and Others, Select Management Services Lesotho (Pty) Ltd v Ratlali and Others (C of A (CIV) 29/09, C of A (CIV) 30/09

Roma Boys F.C. & Others v Lesotho Football Association & Others LLR & LB 1995 – 1996 456

South Africa

Independent Institute of Education (Pty) Limited v Kwazulu – Natal Law Society and Others [2019] ZACC 47

Plascon – Evans Paints v. Van Riebeeck 1984 (3) S.A. 623

India

Pramod Yadav vs The State of Madhya Pradesh Criminal Appeal No. 5189/2020 (23th April 2022)

Introduction:

[1] The underlying dispute between the parties concerns interest and charges incidental to a loan that the applicant obtained from the first respondent.

The applicant is challenging the lawfulness of the charges, costs and expenses as well as interest in excess of 25% per annum on the loan.

[2] The attack is based on the provisions of Money Lenders Order No. 25 of 1989. The Order is renamed an Act in terms of section 2 of Act No. 6 of 1993. I shall therefore refer to it as Money Lenders Act as amended. The application is opposed by the first, third and ninth respondents.

Background:

[3] I turn to salient facts underlying the dispute. On 29th August 2013, the applicant took a loan of M40,000.00 from the first respondent with a view, amongst others, to settle loans she already had with the second and the third respondents. She authorised monthly deductions from her salary to repay the loan and now finds herself deeply entangled in this loan. She clearly cannot cope as her take home salary is M424.42. In the words of the Governor of the Central Bank of Lesotho, *("CBL")*, the applicant has '*hopelessly over – extended herself in terms of borrowing.'*[1]

[4] The applicant attributes her precarious financial situation to sophistries employed by the first respondent who she describes as a money lender together with the second to the fourth respondents. The nub of her

[1] Pleadings – Retselisitsoe Matlanyane's Answering Affidavit, page 75

complaint is that contrary to the Act, the first respondent levied some charges, costs and expenses, as well as interest in excess of 25% per annum on the loan.

[5] The respondents resist the applicant ‘s claims. Their primary contention is, in principle, very simple. It is that the Money Lenders Act as amended has no application in the business of the first to the third respondents, in particular, in the loan transaction in issues. I will in due course deal in detail with the defence advanced by the respondents.

[6] The issues at hand relate to provision of financial services. This is a highly regulated sector. At the centre of the regulation is CBL. In its capacity as the Commissioner of Financial Institutions[2], CBL licences and regulates different categories of financial institutions including money lenders, commercial banks and credit only institutions. To this end, there are statutes which CBL is entrusted with their administration and enforcement.

Regulatory regime

[7] I now turn to consider if the charges and interest on applicant’s loan are unlawful or illegal as contended by the applicant. At the heart of this

[2] Section 47 of the Central Bank Act No.2 of 2000 provides that “The Bank shall serve as Commissioner of Financial Institutions in terms of the Financial Institutions Act 1999 and the Money Lenders Act 1989 and as the Commissioner of Building Finance Institutions in terms of the Building Finance Institutions Act 1976, and as the Commissioner of Insurance in terms of the Insurance Act 1976”. See also section 2 of Financial Institutions Act No. 3 of 2012.

dispute is the application of Money Lenders Act as amended and Financial Institutions Act No.3 of 2012 and its Regulations. A good starting point is therefore to interrogate relevant provisions of these statutes. In my respectful view, both Acts are special enactments regulating the financial sector, albeit different segments.

Money Lenders Act as amended

[8] The Act makes provision for regulation of money lending and for purposes connected therewith. Thus, licensing of money lenders is provided for under this Act. A person wishing to conduct the business of money lending is required to make application to the CBL in terms of section 3 (1) of the Act. In terms of section 4 (1) of the Act, money lender's license is renewed on an annual basis.

[9] Section 2 of the Act defines "money lender" as thus:

> "money-lender" includes every person whose business is that of money-lending or who advertises or announces himself or holds out in any way as carrying on that business whether or not that person also possesses or earns property or money derived from sources other than the lending of money and whether or not that person carries on the business as a principal or agent; but shall not include,
>
> (a) any person **bona fide** carrying on financial banking business or insurance or **bona fide** carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whether he lends money;
> (b) any society registered under the Co-operative societies Proclamation, 1948;

(c) anybody corporate, incorporated or empowered by special enactment to lend Money in accordance with that enactment;
(d) any credit institution defined in terms of the Financial Institutions Act,1973; or
(e) any person exempted from the provisions of this Order by the Minister under Section 25;

[10] Regarding interest, which is a subject of contestation in this matter, section 6 of the Act provides as follows:

"Harsh and unconscionable interest rates

"6. (1) Where in any proceedings in respect of,
(a) any money lent by a money-lender after the coming into operation of this Order; or
(b) any agreement or security made or taken after the coming into operation of this Order in respect of money lent either before or after the coming into operation of this Order, it is found that interest charged exceeds the rate of 25% per annum, or the corresponding rate in respect of any other period, the court shall presume for the purposes of section 13 that the interest charged is excessive and that the transaction is harsh and unconscionable, but this subsection is without prejudice to the powers of the court under section 13 where the court is satisfied that the interest charged, although not exceeding 25% per annum, is excessive.

(2) The powers of the court under section 13(2) may,

(a) in the event of insolvency of the borrower, be exercised, at the instance of the trustee in insolvency, notwithstanding that he may not be a person liable in respect of the transaction; and

(b) be exercised notwithstanding the money-lender's right of action for the recovery of money lent is barred."

[11] The applicant 's complaint is that interest charged on her loan became excessive because contrary to the Act, the first respondent compounded it. Her case in this regard is grounded on section 19(1). The section reads as follows:

"19(1) Save as otherwise provided in this Order, any contract made after the coming into operation of this Order for the loan of money by a money -lender shall be void and unenforceable in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of default in the payment of sums due under the contract."

[12] With respect to fees, costs and charges incidental to a loan, which the applicant asserts were unlawful, the Act provides that:

"20(1) Any agreement between a money-lender and borrower or intending borrower to the money-lender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be void and unenforceable.

(2) If a sum is paid to a money-lender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly.

(3) A person who contravenes any of the provisions of the section commits an offence and is liable on conviction to a fine of M2,000 or to imprisonment for a period of 2 years."

Financial Institutions Act No. 3 of 2012

[13] Part II of the Act provides for licensing of financial institutions. This is aligned to the purpose of the Act which is to:

"…repeal and replace the Financial Institutions Act 1991, to provide for the authorisation, supervision and regulation of banking and non-banking financial institutions, agents of financial institutions and ancillary financial service providers and for related matters."

[14] Section 2 of the Act defines financial institution as thus:

> "financial institution means a deposit taking institution or a non-deposit taking institution carrying out financial activities as stipulated in its licence, irrespective of whether it is a banking or a non-banking financial institution;"

[15] An answer as to what constitutes a financial institution lies in section 27 (1) of the Act which provides as follows:

> **"Financial activities**
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> 27(1) Subject to the terms and conditions imposed under this Act and those stipulated in the respective license, financial activities may include such matters as shall be set out in the Second Schedule or the regulations."

[16] Reference to the second schedule in section 27(1) is erroneous. Financial institutions and their activities are listed under the third schedule of the Act. Credit Only Microfinance Institutions are the last on the list and their commercial activity is described as "Granting of uncollateralized credit to unbanked communities".

[17] Regarding the definition of microfinance business, the section 2 of Act provides as follows:

> "Microfinance business means the business carried on as a principal business of –
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> (a) acceptance of deposits;
> (b) employing such deposits wholly or partly by lending or extending credit for the account and at the risk of the person accepting those deposits, including provision of short term loans to small or micro enterprises and low income households, usually characterised by the use of collateral substitutes such as group guarantees or compulsory savings;
>
> (c) transacting such other activities as may, by regulations under this Act, be prescribed by the Commissioner of Financial Institutions;"

[18] In terms of section 5(2) of the Act, for a local financial institution to be granted a license, it must be registered as a public company. Again, section 6(1)(c) of the Act requires a foreign institution which applies for a license to, amongst other documents submit "a statement from the supervisory authorities of the home country that its principal shareholders, chairman, directors, principal officers and management team as a whole are fit and proper persons and that it is subject to comprehensive supervision on a consolidated basis;". Thus, a foreign financial institution must also be a company in order to be licensed in Lesotho as a financial institution under the Act.

[19] The immediate predecessor of the 2012 Act was the Financial Institutions Act No. 6 of 1999. The respondents rely on the Financial Institutions (Credit-Only Institutions), 2010 for its case. The Regulations were issued pursuant to section 71 of the 1999 Act. The Act is therefore worthy of consideration in this matter.

[20] The 1999 Act had broadly similar purpose and structure to the 2012 Act. Section 5 of the Act makes provision for licensing of a financial institution which is defined in section 2 of the Act as "institution which performs banking business or credit business". Credit business is defined as the "business of extending credit to any person from source other than deposit from public". Based on the scheme of the Act and the Regulations, unlike with banks, credit-only institutions are not deposit takers, rather they advance credit from other sources.

[21] I now turn to 2010 Regulations. In terms of regulation 3, the Regulations apply to "a person or an institution applying for or licensed to provide credit-only services in accordance with the Act [1999 Act]." Regulation 2 provides that -

"a credit provider" means a person or institution licensed under section 5 of the Act to provide credit-only products and services to borrowers and includes:

(a) a person or institution that provides secured or unsecured loans or credit;
(b) a mortagee under a mortage agreement;
(c) a person or institution that advances money-only or credit-only to another person under a credit agreement;
(d) a party to whom an assurance or promise to repay a credit is made under a credit guarantee;
(e) any other person who acquires the rights of a credit provider under a credit agreement after it has been entered into;
(f) excludes any person or institution defined as a money lender under the Money Lenders Order 1989;"

[22] Regulation 4 spells out the objectives of the Regulations as to:

"(a) promote the establishment of viable and reputable credit-only institutions that can provide access to consumer credit and enhance the financial sector and the economy;
(b) provide requirements and criteria on the licensing, regulation and supervision of credit-only institutions;
(c) establish minimum standards in credit practices and a consistent regulatory framework aimed at protecting the interests of both a borrower and a credit provider;

(d) ensure the availability of consumer credit in a fair, transparent and equitable manner;

(e) promote responsible credit granting practices and to protect a borrower from reckless and unfair lending practices;

(f) protect a borrower's privacy and the right to access credit information."

[23] Regulation 5 deals with procedural requirements for registration for provision of credit only services.

[24] Regarding interest and other charges on a loan, the relevant regulations, including regulation 16 on which the respondents rely read as follows:

"12. (1) An agreement constitutes a credit agreement for the purposes of these regulations if payment of an amount owed by one person to another is repayable over a prescribed period of time, and any charge, fee or interest is

payable to the credit provider in respect of the agreement and the amount that will be payable over a prescribed time and includes any or a combination of the following:

(a) a credit facility, as described in sub-regulation (2);
(b) a credit transaction, as described in sub-regulation (3);
(c) a credit guarantee, as described in sub-regulation (4).

…

(8) A credit agreement containing the provisions listed in regulation 13 shall be deemed to be effective once a borrower and credit provider append their signatures on the loan agreement.

15. The prevailing framework used for licensed institutions under the Act may be applied in relation to interest rates and fees.

Permitted fees and charges

16. A credit provider may impose the following costs, charges or expenses in respect of a loan granted by it, provided that such costs, charges or expenses have been agreed to by the borrower in the credit agreement and the fees shall be expressed separately and not as a combination of fees:

(a) an initiation fee;

(b) in the case of a loan on revolving credit, a fee for the grant or the renewal of the loan, and a fee for drawing down on the loan;

(c) a fee for making any payment in a manner other than specified by the credit provider;

(d) a default administration fee;

(e) a service fee;

(f) a collection fee;

(g) a settlement fee;

(h) a credit insurance fee;

(i) a legal;

(j) a recovery fee."

[25] Though Act 2012 repealed and replaced Act 1999, it saved 2010 Regulations per section 78 (1) in terms of which the Regulations were to be updated within a period not exceeding six months of the coming into operation of the 2012 Act. The Act came into operation on the date of its publication in the gazette, the 27th February 2012. It is not clear if the Regulations were updated within six months and this is not an issue before me. The Regulations were however repealed by the Financial Institutions (Credit Only and Deposit Taking Micro – Finance Institutions) Regulations, 2014[3] which were promulgated pursuant to section 71 read with section 27(4) of the Financial Institutions Act, 2012.

Does Money Lenders Act 1989 apply to the loan or to the business of the first respondent?

[26] At the pinnacle of this inquiry is the question whether Money Lenders Act as amended apply to the business transaction or the loan between the applicant and the first respondent. The applicant contends that the provisions of the Act relevant to interest, costs, charges and other expenses remain extant. Accordingly, the provisions of the Financial Institutions (Credit Only Institutions) Regulations 2010 in terms of which interest and other charges were levied on her loan must be declared void and unenforceable to the extent of their inconsistency with the Act. Though the applicant does not specifically refer to 2010 Regulations in the notice of motion, it is clear from the founding affidavit that they are the ones under attack.

[27] According to the applicant, her contractual relationship with the first respondent was supposed to come to an end in August 2016, but for excessive unlawful interest and charges.

[3] The Regulations were promulgated through Legal Notice No. 51 of 2014.

[28] The cornerstone of applicant ‘s case is the decision in **Afrisure Finance and Another**[4]. Indeed, the case puts it beyond dispute that section 20(1) of the Act proscribes and renders an agreement between a money lender and a borrower imposing costs, charges or expenses incidental or relating to the loan void and unenforceable.

[29] The applicant asserts that contrary to section 19(1) of the Act, the first respondent charged her compounded interest. As a consequence, so argues the applicant, she has to pay interest in excess of 25% per annum.

[30] Conversely, the first and the second respondents dispute that they are registered as money lenders. In particular, the first respondent asserts that it was registered in 2012 as Credit – Only Institution in terms of Financial Institutions (Credit – Only Institutions) Regulations 2010. It is currently registered as Credit Only Micro Finance Institution in terms of Financial Institutions (Credit Only and Deposit Taking Micro – Finance Institution) Regulations 2014. It contends that its business activities are not governed or regulated by the Money Lenders Act as amended, but by the Financial Institutions Act, 2012.

[31] The Governor of CBL confirms that the first to third respondents are licenced as credit-only micro-finance institutions and not as money lenders. The fourth respondent was registered as a money lender, but it is no longer registered as such.

[4] Afrisure Finance and Another v Lecheka and Others, Makhulong Multi Finance (Pty) Ltd t/a B. Blue Financial Services v Nona and Others, Select Management Services Lesotho (Pty) Ltd v Ratlali and Others (C of A (CIV) 29/09, C of A (CIV) 30/09

[32] Accordingly, the provisions of Money Lenders Act 1989 do not apply to the business of the respondents. They have no relevance to the business relationship between the applicant and the first respondent, so contends the respondents. In imposing costs and charges on the loan, the first respondent relied on the provisions of regulation 16 of 2010 Regulations.

[33] The alleged inconsistency between the Regulations and the Money Lenders Act as amended is disputed by the respondents who argue that the two regulatory regimes govern different situations as a result of which the inconsistency does not arise.

Discussions

[34] The vexed question is whether the first to third respondents are money lenders. The applicant classifies them as such in her founding papers and persists with this classification in her replying affidavit. This assertion is hotly disputed by the respondents. The regulator, CBL, corroborates the version of the respondents that they are not money lenders.

[35] To demonstrate that it is not a money lender, the first respondent has gone further to attach its licenses from the regulator from 2012 when it was licensed as a credit-only institution and later as credit-only microfinance institution. This is a proper case in my view where I have to assume the correctness of the respondents' version in accordance with Plascon – Evans rule[5].

[36] Undoubtedly, Money Lenders Act as amended provides for licensing and regulation of money lenders. Thus, it regulates business

[5] Planscon – Evans Paints v. Van Riebeeck 1984 (3) S.A. 623 at 634; Roma Boys F.C. & Others v Lesotho Football Association & Others LLR & LB 1995 – 1996 456 at 464

relationship between money lenders and borrowers. The answer to a question as to who a money lender is lies in the definition of the word as it appears in interpretation section of the Act. The definition unequivocally excludes a body corporate that is incorporated or empowered by special enactment to lend money in accordance with that enactment as well as a credit institution defined in terms of Financial Institutions Act No.23 of 1973.

[37] By virtues of section 9(1) of the Interpretations Act No. 19 of 1977, reference to Financial Institutions Act, 1973[6] in this regard must be construed to mean Financial Institutions Act, 2012. Section 9(1) provides that:

> "Where in an Act a reference is made to another Act, such reference shall be deemed to include a reference to that other Act as it may from time to time be amended."[7]

[38] The unavoidable conclusion I arrive at is that the first to third respondents are not money lenders in the context of money lenders Act as amended. Firstly, they have not been licensed or registered as such. Secondly, as a consequence of them being body corporates licensed to lend money pursuant to Act 2012, as well as being credit institutions in terms of the said Act, they are expressly excluded from the definition of a money lender.

[39] Though both Acts operate within financial sphere and are administered by the same regulator, CBL, they clearly are independent regimes regulating different segments or role players in the financial sector. On the one hand, the purpose of the Money Lenders Act as amended is to regulate the business of money lending. On the other hand, Financial Institutions Act 2012

[6] The Act is a predecessor to Financial Institutions Act 1999.
[7] The meaning of the word "amend" in terms of section 3 (1) of Interpretation Act, 1977 includes to repeal.

regulates banking and non – banking financial institutions, their agents and ancillary financial service providers.

[40] Section 4(1) - (2) of the Financial Institutions Act, 2012 provides as follows:

> **"Application and Exemptions**
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> 4. (1) This Act shall apply to deposit taking and non-deposit taking financial institution as specified by or pursuant to it.
>
> (2) This Act shall not apply to –
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> (a) an institution licensed or registered and supervised by the Commissioner in accordance with the Central Bank of Lesotho Act 2000 and pursuant to the Money Lenders Act 1989, the Building Finance Institutions Act 1975 and the Insurance Act 1976;
>
> (b) an association, a small financial cooperative, a society and an informal self-help organisation as the Commissioner may determine by notice published in the Gazette."

[41] Section 4(1) – (2) of the Act has been cascaded to regulation 5 of 2010 Regulations which expressly excludes money lenders under the Money Lenders Act as amended from the definition of the word credit provider. Similarly, we have already seen that credit institutions defined as such in terms of the 2012 Act are excluded from the definition of a money lender. Thus, these laws exist side by side, but their application is not to encroach on each other's terrain. Loosely speaking, the first to the third respondents may be referred to as money lenders. Technically and in the context of 1989 Act, they are not.

[42] Though the applicant concedes in the replying affidavit that the respondents are licensed as Credit – Only Micro – Finance Institutions in terms of 2014 Regulations, she contends that the Court must look at the nature of the

transaction[8] in resolving this dispute. I must confess of having some difficulty in fully appreciating where the applicant was going with this argument. The applicant does not present the features of a transaction entered with a money lender vis a vis the one with a credit – only institution. Therefore, this does not advance her case.

[43] Tellingly, the applicant relies on section 20(1) – (2) of the Money Lenders Act as amended to challenge other costs, fees and charges incidental to the loan. Obviously, section 20(1) – (2) apply to "agreement entered between a money-lender and a borrower". Likewise, the sections on interest, in particular section 19 on which the applicant depends for his challenge relating to compound interest, apply in respect of a loan by a money – lender. It bears repeating that the respondents are not money lenders in the context of 1989 Act as a result of which the sections are not applicable to them or to the loan the applicant obtained from the first respondent.

[44] Turning to the argument regarding the perceived inconsistency between the regulations and the Money Lenders Act as amended: *Theron* J, said the following in **Independent Institute of Education (Pty) Limited v Kwazulu – Natal Law Society and Others**[9]:

> [38] It is a well-established canon of statutory construction that "every part of a statute should be construed so as to be consistent, so far as possible, with every other part of that statute, and with every other unrepealed statute enacted by the Legislature". Statutes dealing with the same subject matter, or which are in pari materia, should be construed together and harmoniously. This imperative has the effect of harmonising conflicts and differences between statutes. The canon derives its force from the presumption that the Legislature is consistent with itself. In other words, that the Legislature knows and has in mind the existing law when it passes new legislation, and frames new legislation with reference to the existing law. Statutes relating to the same

[8] Pleadings – 'Malifelile Ntoi's Replying Affidavit, page 94
[9] [2019] ZACC 47

> subject matter should be read together because they should be seen as part of a single harmonious legal system.
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> [39] This canon of statutory interpretation was expressly recognised and affirmed by this Court in Shaik.16 In that case it was held that the words "any person" in section 28(6) of the National Prosecuting Authority Act,17 despite their wide ordinary meaning, should be construed restrictively to avoid a clash with a provision in another statute.
>
> [40] More recently, this Court in Ruta19 interpreted provisions of the Immigration Act20 together and in harmony with those of the Refugees Act. In a unanimous judgment, this Court noted that "[w]ell-established interpretive doctrine enjoins us to read the statutes alongside each other, so as to make sense of their provisions together."

[45] In **Pramod Yadav vs The State of Madhya Pradesh**[10] the court said the following on the approach to be followed in resolving a clash between statutes:

> "[70]… Such a conflict, as laid down in several cases, may be resolved by judiciary on various considerations: such as the policy underlying the enactments, the language used, the object intended to be achieved; or mischief sought to be remedied, etc. One of the tests applied by Courts is that normally a later enactment should prevail over the former. The Courts would also try to reconcile both Acts by adopting harmonious interpretation and applying them in their respective fields so that both may operate without coming into conflict with each other. In resolving the clash, the Court may further examine whether one of the two enactments is "special" and the other one is "general". There can also be a situation in law where one and the same statute may be held to be a "special" statute vis-a`-vis one legislation and "general" statute vis-à-vis another legislation. On the basis of one or more tests, the Court will try to salvage the situation by giving effect to non obstante clause in both the legislations."

[46] In translating the above principles into practise, this is a good case to adopt a harmonious interpretation and apply each law to the segment for which it was enacted. Money Lenders Act as amended must be applied to money lenders contemplated in the Act. Equivalently, the 2012 Act must be applied to financial institutions, including credit- only institutions or credit – only microfinance institutions, licensed pursuant thereto.

[10] Criminal Appeal No. 5189/2020 (23th April 2022)

[47] It bears relating that section 4(1) – (2) of the 2012 Act and regulation 2(f) of 2010 Regulations unequivocal commands that the Act and the Regulations do not apply to money lenders licensed under the 1989 Act. In the same token, the definition of a money lender excludes financial institutions, as well as credit- only institutions or credit - only microfinance institutions, licensed under the 2012 Act. Consequently, the application of the 1989 Act does not cover these other financial institutions. Construing and applying each legislation to the segment for which it was enacted and according to its own terms, I do not find inconsistencies between the 1989 Act and the 2010 Regulations.

[48] The prayers which the applicant is seeking before this Court depend on the Court finding that the respondents are in the business of money lending in the context of Money Lenders Act as amended or that the loan was governed by the Act and on a positive finding that there is inconsistency between the Act and the Regulations. In view of the conclusion I have reached on this aspect, it follows that applicant's case has collapsed. It was certainly not built on solid ground, hence it was easily shaken.

Order

[49] In the circumstances I make the following order:

49.1 the application is dismissed with costs.

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A.R. MATHABA J
Judge of the High Court

For the Applicant: Adv. C. Lephuthing

For the 1st Respondent: Adv. Mr. P.J.J Zietsman

For the 3rd Respondent: Adv. S. Phafane KC

For the 9th Respondent: Mrs. M. T. Phafane