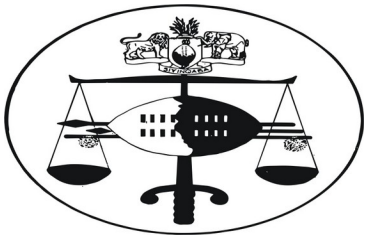

IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 1861/11

In the matter between

ANDREW MKHONTA **Applicant**

and

EDGARS STORES SWAZILAND LIMITED **Respondent**

Neutral citation:	*Andrew Mkhonta v Edgars Stores Swaziland Limited* (1861/11) [2012] SZHC 56 (28th March 2012)
Coram:	Mamba J
Heard:	**28 March, 2012**
Delivered:	**28 March, 2012**
Reasons handed down	**29 March, 2012**

[1] On 27th December 2007, Mr Andrew Mkhonta, the applicant herein opened an instalment credit account with the respondent. He subsequently fell in arrears with his payments. The papers before me do not indicate when this started, but it was definitely before 23rd February, 2011. I note here that the respondent says the credit agreement was entered into on 10th January, 2008.

[2] It is common cause that on 23rd February, 2011 the applicant paid the full amount owing on the account. However, his name had already been submitted to Trans Union as a bad debtor. Applicant describes Trans Union and its activities as "a Company where all delinquent debtors are reported in the business community. Trans Union then advises all the institutions who seek to have background information on potential customers or clients.

[3] After settling the said account with the respondent, applicant discovered that the records at Trans Union indicated that he owed a sum of E3542.00 to Edcon, which is the parent company of the respondent. On further enquiries, the applicant was told by Edcon that notwithstanding settling the account, his name could not be removed from being blacklisted as a bad payer, before the lapse of two years from the date of his initial listing as a bad payer which is 08th November 2010. This, he was told, was in terms of

the National Credit Act of the Republic of South Africa, which Act, it is common cause is said to govern the instalment contract between the parties.

[4] Based on the above facts, the applicant not being satisfied with the listing aforesaid, has filed this application seeking, inter alia, his de-listing or the removal of his name from the Credit Bureau (Trans Union). His specific prayer in this regard is for respondent "… to transmit to Trans Union the information that applicant is no longer indebted to it." He says, contrary to Edcon's assertions, that this information he seeks will cause the removal of his name from the credit bureau. It is the applicant's assertion that his listing as a bad payer when infact he has liquidated his debt is unjustified, unconstitutional and tramples on his right to do business with any one he deems appropriate. He says because his name still appears in the credit bureau, he is unable to access services or facilities with any financial institution. He gives an example of the Mbabane branch of the First National Bank that refused him permission to open a bank account for a company he operates under the name of Zumcool (Pty) Ltd. Lastly, he argues that the National Credit Act of South Africa is a South African Act and has no extra-territorial application. In short it does not apply in this country.

[5] The respondent's response to the application is that in terms of the law governing the agreement between the parties, which is South African law, the listing of the applicant in the credit bureau is in order. It is submitted by the respondent that in terms of the agreement the parties agreed that the transaction will be governed or regulated by South African law and the listing of the applicant was done in terms of the National Credit Act of that country. Similarly, his non-de-listing in the circumstances, is in accordance with that Act and is proper.

[6] I accept entirely, applicant's assertion that the National Credit Act of South Africa has no extra-territorial application. This is the general position. The respondent has not, however, said it has such application. The respondent merely says that law, by agreement of the parties, governs the credit agreement between them. There is merit in this assertion or argument. There is absolutely nothing wrong with parties agreeing that a particular transaction or agreement concluded between them in Swaziland shall be governed by the law of Ruritania. However, in saying so, the parties do not suggest that the law of Ruritania shall govern all other transactions concluded between other parties in Swaziland. That agreement is in respect of that transaction and that transaction between them only. I reject applicant's submission on this point. The parties were a liberty in the

exercise of their freedom of contract to choose which law shall govern their agreement. In this instant case, they chose the law of South Africa.

[7] The applicant accepts that in terms of the National Credit Act aforesaid, he or his name may remain listed with the Credit bureau for the duration stated above but says that this is without justification in circumstances such as the one under consideration herein. I have not had access to this Act. I do not know what prompted its enactment or what mischief it was meant to curb or regulate. But inspite of these things or facts, the applicant has failed to put before me sufficient reasons or fact to convince me that I should order his de-listing from the credit bureau before expiration of the term provided in the National Credit Act. The information or order sought is, according to the applicant, to facilitate or procure his de-listing. His de-listing is of course subject to the period of two years already mentioned.

[8] It should be remembered that the parties voluntarily chose to have the law of South Africa govern their agreement. The terms were voluntarily, one has to assume in the absence of facts to the contrary, decided and agreed to by the parties. Being listed as a bad debtor or payer is, to my mind, not a status that suddenly comes to an end when one eventually pays all his debts or pays his indebtedness. Like an insolvent, a break or period of

rehabilitation is necessary; to allow the person or entity concerned to restart on a new and clean page. That period of two years from the date of initial listing referred to in the Act may be such a period. The applicant has failed to establish that this is unreasonably burdensome, contrary to public policy and thus unconstitutional. The applicant, I am sure, cannot deny the fact that the general public, including the business community, needs to be protected by the law against unscrupulous consumers who are bad debtors or bad payers. The blacklisting and duration thereof may be one such measure of protection. I find nothing contrary to public policy or good morals in such a measure.

[9] The foregoing then are my reasons for dismissing the application with costs.

MAMBA J

For Applicant:	**Mr. B.J. Simelane**
For Respondent:	**Mr. T. M. Dlamini**