Credit consumers left in distress by Con Court judgment

The Socio-Economic Rights Institute of South Africa (SERI) has taken note of the Constitutional Court’s decision in Kubyana v Standard Bank, handed down today, 20 February 2014.

SERI respects the decision of the Court. However, we remain concerned that the decision may not do enough to protect distressed consumers who have fallen into arrears on their credit agreements and who are genuinely in need of debt counselling and other alternative dispute resolution mechanisms. These options are a debtor’s last hope of consensually resolving disputes which may result in money judgments being taken against them, perhaps leading to the loss of a home, or other property vital to their well-being.

The Court held that it need not be established that a distressed consumer knew of these options before a credit agreement is enforced against them. The Court found that it is up to a distressed consumer to explain why their attention was not drawn to these options if a matter proceeds to court.

The Court’s decision suggests that a distressed consumer who fails to collect his or her registered mail acts unreasonably and “eschew[s] reliance on the consensual dispute resolution mechanisms provided for by the [National Credit] Act”.

SERI fears that this goes too far. This finding does not account for the uneven distribution of postal services across South Africa and the mobility of the South African poor. It may also encourage courts in future cases to assume that distressed consumers act evasively and in bad faith.

SERI considers that it is credit providers – who are as a rule extremely well-resourced – that are best placed to ensure that every reasonable effort is made to inform a distressed consumer of his or her options, and the rights flowing from them. Distressed consumers should not be required to say why they did not know of rights that were never explained to them.

More than anything else, those in distress - whether economic, social or personal - deserve to be treated with dignity, sympathy and respect in the credit agreement enforcement process.

- Read the Kubyana judgment [here](#).
- Read more on the case [here](#).