

What is most close to a Debt Collector's heart?

By Moagi Moloi

Ask any debt collector this question and surely you will get the same answer: collection commission. The highest court in the land recently had to determine the debtor collector's income lifeline in the case of *Cell Connect (Pty) Ltd v Oseg Group (Pty) Ltd CACGB-043-16 (Unreported)*.

The court had to determine a creditor's entitlement to collection commission after judgement has been granted; and further, the extent at which commission can, if at all, be incorporated in an order granting the judgement, in which future collection is contemplated. The basic facts of the case are typical, A owes B, B does not pay back A. A then applies to court and obtains a summary judgement against B. The court orders against B and both parties agree to a settlement that includes collection commission. The settlement agreement is made an order of court. B is disheartened with the order and applies to the Court of Appeal, in this case resulting in a landmark ruling. The issue of collection commission lacked clarity as to when is it claimable and how far the courts can go.

The court went to the heart of debt collection and highlighted that collection commission, which the creditor pays to the collector as a reward on the amount recovered, has by practice, been worked out as a percentile of the collected amount. This means it is payable once the debt amount has been collected. In plain terms, it is a reward for costs *actually* incurred on amounts *actually* collected.

Dissecting the issues, the Court categorically stated that charging collection commission before collection of a debt may constitute dishonesty. Logically speaking, this makes sense as, by the nature of commission you have to actually collect before earning commission.

Our courts have dealt with the issue of collection commission in the past and one consistent thread among the judgments is that creditor cannot charge both collection commission and legal costs cumulatively on the debtor. This, however, does not bar them from charging collection commission where there was an agreement between the parties for scheduled payments.

Furthermore, it is improper to agree on an aggregate collection commission at pre-collection stage because by then the collection commission is not due and payable. Collection Commission is payable and due on installements collected after judgement and courts cannot predetermine the sum of collection commission at this stage.

This judgement gives clarity on this issue and an answer to the question posed.