

THE REGULATION OF FINANCIAL MARKETS FOR LOW-INCOME EARNERS IN SOUTH AFRICA

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Abstract

Many low-income earners have financial challenges and experience over-indebtedness in their activities as they do not have access to formal financial institutions. They often acquire loans in informal sectors where they pay high interest rates. The individuals who qualify for such loans are those who have salaries or receive social grants from the government. Access to regular income serves as a guarantee to secure a loan from money lenders. The individuals lack access to formal banking institutions because they are unable to fulfil the banks' stringent requirements. They often need money to maintain their lifestyle or cover financial obligations for their relatives. They require huge amounts of money to settle loans they obtained to cover their living expenses and other materials. Micro lending is regulated both in international law and in South Africa. The National Credit Act promotes responsible borrowing and prohibits over-indebtedness. It protects the rights and responsibilities of both consumers and credit providers. There are additional costs for persons who buy on credit, including initiation fee, service fee, credit insurance and interest rates. Creditors can use emolument attachment orders to recover their moneys from the borrowers or consumers. Courts supervise the emolument attachment orders and safeguard fairness to both parties. Over-indebtedness leads individuals to live in debt spirals and experience financial distress. There is a need to regulate the financial market for low-income earners to ensure that they do not become over-indebted. Some measures, such as regulation of interest rates, are needed to protect low-income earners in the financial market.

Keywords: financial market, low-income earner, over-indebtedness, micro lending, interest rates.

JEL Classification: K12, K22, K33

1. Introduction

Access to financial markets is a challenge for low-income households.² The definition of low-income households refers to families whose income is less than R3,500/US \$580 per month.³ Many individuals are unsuccessful when they try to access credit. Low-income earners cannot access credit through formal financial sector due to stringent requirements.⁴ As a result, they get access to credit from micro-lenders who charge excessive interest rates.⁵ Micro-lenders are persons or banks that make loans in small amounts to individuals and charge high interest rates.⁶ They often tend to exploit the low-income households and make them over-indebted.⁷ This is a significant challenge as the low-income earners are excluded from accessing finance through formal financial sector.

Stokvels assist their members to acquire finance on a rotation basis. A stokvel is a group of natural persons who join to make contributions at fixed interval (monthly or weekly) for mutual support to achieve specific objectives.⁸ Stokvels sometimes provide access to credit to members and non-members at high interest rates. Buying on or using credit attracts additional costs such as

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² Elizabeth Hull, "Banking in the Bush: Waiting for Credit in South Africa's Rural Economy", *Africa: Journal on the International African Institute* 82, no. 1 (February 2012): 184, doi:10.1017/S0001972011000702.

³ Mary R. Tomlinson, "The Development of Low-Income Housing Finance Sector in South Africa: Have We Finally Found a Way Forward?", *Habitat International* 32, issue 1 (March 2007): 77, <https://doi.org/10.1016/j.habitatint.2006.04.004>; Department of Housing (DOH) 1994. White Paper. A new housing policy and strategy in South Africa, Government Gazette No. 16178, Pretoria. Currently US \$580 are equal to R8,700. This means that low-income households earn less than R8,700 per month.

⁴ Polly Mashigo, "The Vending Practices of Township Micro-lenders and their Impact on the Low-Income Households in South Africa: A Case for Mamelody Township", *New Contree* 65, (December 2012): 28.

⁵ *Ibid* 34.

⁶ Happy Mohane, Gerhard Coetzee and William Grant, "The Effects of the Interest Rate Ceilings on the Micro Lending Market in South Africa", *Agrekon* 39, issue 4 (2000): 737, <https://doi.org/10.1080/03031853.2000.9523688>.

⁷ Polly Mashigo, *op. cit.*, 2012: 34.

⁸ Nobantu Mkhwanazi, "Accelerating Financial Inclusion in South Africa: Are Online Stokvels the Answers?" August 2020. Available at https://www.usb.ac.za/usb_insights/accelerating-financial-inclusion-in-south-africa-are-online-stokvels-the-answer/ (accessed on 24 March 2022); Anon "Stokvels: a Mechanism of Informal Social Security". 28 November 2019. Available at <https://fwblaw.co.za/stokvels-a-mechanism-of-informal-social-security/> (accessed on 24 March 2022).

initiation fee, service fee, credit insurance and interest rates.⁹ Currently, the *National Credit Act*¹⁰ provides access to credit market and protects consumers. Furthermore, it promotes previously disadvantaged persons to access credit and encourages responsible borrowing. It protects both credit providers and consumers in their rights as well as responsibilities. Creditors can use emolument attachment orders to recover their moneys from the consumers or borrowers.¹¹ Courts supervise the emolument attachment orders and ensure that the borrowers remain with sufficient moneys to cover for their basic needs.¹² Persons live in debt spirals when they are over-indebted and may experience emotional and financial distress.¹³ There is a need to regulate financial markets to protect low-income earners and ensure that they have access to credit. This paper discusses the issues with low-income earners in their quest to access credit and proposes ways to improve the current situation.

2. Access to loans in the informal sector

The majority of the low-income households who live in townships are unable to access credit from the formal financial institutions, especially banks.¹⁴ They depend on the financial services of township micro-lenders, “known as *mashonisas* for a range of needs like food, clothing, health care and funeral expenses.”¹⁵ Micro-lenders are responsive to the credit needs of low-income households. However, in their activities, they exploit vulnerable households and place them in the debt spirals with emotional and financial stress.¹⁶ The access to formal financial credit market is highly limited or non-existent and individuals use innovative ways to acquire finance or credit.

In South Africa, the poor and low-income earners have no access to financial services.¹⁷ As a result, they join, create and rely on stokvel services in order to curb their financial challenges and improve their lives.¹⁸ It is necessary to outline the meaning of stokvel. The term stokvel refers to a group of people who voluntarily agree to regularly contribute money to a common pool and circulate the pool among themselves.¹⁹ Briefly, stokvels are rotational savings and credit associations (ROSCAS) that are run mostly by low-income earners in order to improve their financial situations.²⁰ The characteristics for different types of stokvels include being formed for pecuniary gain, best interest of members, fixed and regular contribution, equitable distribution of society fund, and voluntary membership.²¹

⁹ Section 101 of the National Credit Act 34 of 2005; Jonathan Campbell, “The Excessive Cost of Credit on Small Money Loans under the National Credit Act 34 of 2005”, *SA Merc LJ* 19 (2007): 255-257.

¹⁰ National Credit Act 34 of 2004.

¹¹ *University of Stellenbosch Legal Aid Clinic and Others v. Minister of Justice and Correctional Services and Others* 2015 5 SA 221 (WCC).

¹² *University of Stellenbosch Legal Aid Clinic and Others v. Minister of Justice and Correctional Services and Others; Association of DebtRecovery Agents NPC and Others v. University of Stellenbosch Legal Aid Clinic and Others; Mavara Trading 279 (Pty) Ltd v. University of Stellenbosch Legal Aid Clinic and Others* 2016 6 SA 596 (CC).

¹³ Polly Mashigo, *op. cit.*, 2012: 38-39.

¹⁴ Ingrid Hurwitz and John Luiz, “Urban Working Class Credit Usage and Over-Indebtedness in South Africa”, *Journal of Southern African Studies* 31, issue 1 (2007): 112; Noah Kofi Karley, “Challenges in Mortgage Lending for the Under Served in South Africa”, *Housing Finance International*, (September 2003): 31; A Pillay and WA Naude, “Financing Low-Income Housing in South Africa: Borrower Experiences and Perceptions”, *Habitat International* 30, issue 4 (December 2006): 878.

¹⁵ Polly Mashigo, *op. cit.*, 2012: 38-39.

¹⁶ *Ibid* 25.

¹⁷ Blessing, Makabeta Maumbe, “Digital Financial Service Delivery to Poor Communities in South Africa: a Preliminary Assessment”, *International Review of Business Research Papers* 2, no. 2 (October 2006): 72.

¹⁸ Howard Chitimira, “Historical Aspects of the Statutory Regulation of Financial Inclusion for the Poor and Low-Income Earners in South Africa”, *AUDE* 16, issue 5 (2020): 271.

¹⁹ Grietjie Verhoef, “Informal Financial Service Institutions for Survival: African Women and Stokvels in Urban South Africa, 1930 – 1998”, *Enterprise & Society* 2, issue 2 (2001): 263.

²⁰ Howard Chitimira, “Historical Aspects of the Statutory Regulation of Financial Inclusion for the Poor and Low-Income Earners in South Africa”, *AUDE* 16, issue 5 (2020): 272; Grietjie Verhoef, “Informal Financial Service Institutions for Survival: African Women and Stokvels in Urban South Africa, 1930 – 1998”, *Enterprise & Society* 2, issue 2 (2001): 259; and Sally Matuku and Kaseke Edwell, “The Role of Stokvels in Improving People’s Lives: the Case in Orange Farms, Johannesburg, South Africa”, *Social Work/Maatskaplike Werk* 50, no. 4, issue 4 (2014): 504, <http://dx.doi.org/10.15270/50-4-388>.

²¹ Grietjie Verhoef, “Informal Financial Service Institutions for Survival: African Women and Stokvels in Urban South Africa, 1930 – 1998”, *Enterprise & Society* 2, issue 2 (2001): 263.

There are some categories of stokvels that allow low-income earners to get access to credit.²² The major categories of stokvels that provide access to finance for their members are: saving clubs, investment groups, high-budget stokvels, and burial societies.²³ Each of these categories of stokvels has its own ways of assisting its members to achieve services that are normally offered by the formal financial institutions. They often assist their members to acquire enormous relief in their financial issues. Stokvel members are able to cover for their basic needs such as food, household necessities, clothes and school fees.²⁴ It is necessary to unpack each of the four major categories of stokvels, namely saving clubs, investment groups, high-budget stokvels, and burial societies in order to understand how they function.

The main purpose of saving clubs is to save cash which is dispensed and given to one of their members according to a mutually agreed rotation.²⁵ Members of the stokvel contribute on a weekly, fortnightly or monthly basis according to their agreement.²⁶ They contribute a small amount of cash as they are low-income earners who have no creditworthiness in the formal banking system.²⁷ Consequently, they are unable to get small loans from the financial institutions to pay for school fees, clothes, or purchase building materials to build their house.²⁸ Thus stokvel makes all members responsible as they are owners of their institution that they have created themselves.²⁹ Therefore, each member contributes to the success of the stokvel.

Saving clubs often make a formal constitution where they include mutually accepted rules for their activities.³⁰ In their constitution, they can include the amount of fixed contributions, regular meetings, agreement on the order of rotation pay-out prior to the commencement of the cycle.³¹ The life span of saving clubs terminates at the end of the cycle. However, members usually agree to make another cycle among the trusted members of the group.³² The majority of members of the saving clubs are women.³³ They have been able to purchase basic necessities of the household such as blankets, pots, clothes, and pay school fees for their children.³⁴ This is a significant improvement brought by the saving clubs in the lives of the low-income earners.

The second category is the investment stokvel which has the goal “to accumulate capital by investing in business ventures”.³⁵ It promotes savings and each member regularly contributes a fixed amount of money on a monthly basis.³⁶ They do not give contribution to any member every month rather moneys are often banked or saved to accumulate. They have a specific goal to achieve for all members, for instance purchase of fridges, plot of land, a taxi, a shebeen, *etcetera*.³⁷ Members of the investment stokvels may request loans from the stokvels as the contributions are saved in a bank account or building society until their purpose is achieved.³⁸ However, the members who take such loans have to pay them with interest of at least 20% per month.³⁹ Nevertheless, members are prepared to pay such interest rates as they do not have access to credit from formal banking system or informal

²² JNJ Kritzinger, “African Cultural Resources in the Struggle Against Mammon – The Challenge of Stokvels to the Mission of the Church”, *Mission Studies* XIII 1 & 2, 25 & 26 (1996):115.

²³ Grietjie Verhoef, “Informal Financial Service Institutions for Survival: African Women and Stokvels in Urban South Africa, 1930 – 1998”, *Enterprise & Society* 2, issue 2 (2001): 266.

²⁴ Sally Matuku and Kaseke Edwell, “The Role of Stokvels in Improving People’s Lives: the Case in Orange Farms, Johannesburg, South Africa”, *Social Work / Maatskaplike Werk* 50, no. 4, issue 4 (2014): 509.

²⁵ JNJ Kritzinger, *op. cit.*, 1996:115.

²⁶ Grietjie Verhoef, *op. cit.*, 2001: 266; Sally Matuku and Kaseke Edwell, “The Role of Stokvels in Improving People’s Lives: the Case in Orange Farms, Johannesburg, South Africa”, *Social Work/Maatskaplike Werk* 50, no. 4, (2014): 504.

²⁷ JNJ Kritzinger, *op. cit.*, 1996: 116.

²⁸ *Ibid* 116.

²⁹ *Ibid* 117-118.

³⁰ Grietjie Verhoef, *op. cit.*, 2001: 267.

³¹ *Ibid* 267.

³² *Ibid* 267.

³³ *Ibid* 267; JNJ Kritzinger, *op. cit.*, 1996: 117.

³⁴ JNJ Kritzinger, *op. cit.*, 1996: 117.

³⁵ Sally Matuku and Kaseke Edwell, *op. cit.*, 2014: 506.

³⁶ *Ibid* 506.

³⁷ JNJ Kritzinger, *op. cit.*, 1996: 118.

³⁸ *Ibid* 118.

³⁹ *Ibid* 118.

financial sector.⁴⁰

Investment stokvels are also called credit associations as they use accumulated funds to provide loans to both members and non-members.⁴¹ Lending is an additional role that provides further finance to the accumulated funds. Members of investment stokvel can mutually consent to dissolve it when its purpose has been achieved. Furthermore, they can also agree to terminate the investment stokvel and divide among themselves all the accumulated funds.⁴²

The third category is the high-budget stokvels which are established in order to promote savings and investments, and operate as financial institutions.⁴³ Members of these stokvels occupy a high social standing in society and have credibility in the community.⁴⁴ They contribute a substantial amount on a regular basis which enable them to receive lump-sum payments which they can use to acquire their needs such as household good and other necessities.⁴⁵ Furthermore, members of high-budget stokvels can obtain loans between themselves; however, stokvel saving account cannot be used to provide loans to members.⁴⁶ Members of this stokvel are mostly men.

The fourth category of stokvels are burial societies which are formally organised as they have a written constitution and a formal organisational structure to run their activities.⁴⁷ They meet regularly, and each member is compelled to make a regular contribution mutually agreed upon. Members cannot obtain loans from the funds already paid. They keep all the contributions in a bank account.⁴⁸ Members of the burial societies are mostly women due to the role they play traditionally in funeral activities.⁴⁹ Burial stokvels occurred as black workers migrated to the gold mines.⁵⁰ According to the African tradition, the body of the deceased has to be transported to the rural areas, and this culture forced black workers to form burial stokvels.⁵¹ Each member of burial stokvels regularly pays contribution for funeral expenses. They receive financial contribution when someone dies, including purchase of a coffin and transporting the body.⁵²

Black people create burial societies as they experience financial problems and have to provide a decent funeral to the deceased.⁵³ Traditional indigenous funerals require high costs and they often cripple the surviving family of the deceased.⁵⁴ Burial societies provide financial assistance to low-income earners in order to honour the requirements for the traditional funerals.⁵⁵ Members of the burial societies who have deceased persons receive contribution according to the provisions of their constitution or agreement between all members.⁵⁶ Therefore, burial societies are a source of financial assistance to low-income earners.

Members of a burial society usually agree to provide assistance to one another in case of the death of a member or his/her relatives.⁵⁷ They view their promised assistance in case of death as an insurance. Some activities of the burial societies resemble certain characteristics of insurance contract. For instance, members make contribution on the expectation that an uncertain future event will materialise in order to receive a financial assistance.⁵⁸ The actual payment to a member occurs in the case of death of a member or his/her relative. The aim of the burial societies is not to make

⁴⁰ Ibid 118.

⁴¹ Grietjie Verhoef, *op. cit.*, 2001: 269 - 270.

⁴² Ibid 270.

⁴³ Sally Matuku and Kaseke Edwell, *op. cit.*, 2014: 506.

⁴⁴ Grietjie Verhoef, *op. cit.*, 2001: 270.

⁴⁵ Sally Matuku and Kaseke Edwell, *op. cit.*, 2014: 506.

⁴⁶ Grietjie Verhoef, *op. cit.*, 2001: 271.

⁴⁷ Ibid 268.

⁴⁸ Ibid 268.

⁴⁹ Ibid 268.

⁵⁰ Sally Matuku and Kaseke Edwell, *op. cit.*, 2014: 506.

⁵¹ Ibid 506.

⁵² Ibid 506.

⁵³ WG Schulze, "The Origin and Legal Nature of the Stokvel (Part 1)", *SA Merc LJ* 9, issue 1 (1997): 27.

⁵⁴ Ibid 27.

⁵⁵ Ibid 27.

⁵⁶ Ibid 28.

⁵⁷ Ibid 28.

⁵⁸ WG Schulze, "The Origin of Legal Nature of the Stokvel (Part 2)", *SA Merc LJ* 9, issue 2 (1997): 153.

profit for members but to provide mutual assistance between members.⁵⁹ Apart from financial support, burial societies provide moral and social support to the bereaved family in different ways.⁶⁰ Thus burial societies provide a source of income to support their members who are often low-income earners.

3. Regulation of micro lending in international law

International law regulates micro-lending in order to protect the interests of persons that are involved in the transactions.⁶¹ The Protection of Wages Convention⁶² imposes an obligation on each state to prevent the violation of socio-economic rights by private actors in its jurisdiction. The Convention protects debtors who are mostly low-income earners. For instance, it provides that wages may be attached or assigned only in a manner and within limits prescribed by national laws or regulations.⁶³ Furthermore, wages are protected against any attachment or assignment to the extent deemed necessary for the maintenance of the worker and his or her family.⁶⁴ The Convention requires the judiciary or another impartial body capable of providing an adequate remedy to supervise the attachment of wages; and laws and regulations of the states must prescribe appropriate remedies and penalties for violations of the provision of the convention.⁶⁵ These provisions protect the wages of low-income earners so that they can be able to cover their basic human needs.

The Protection of Wages Recommendation provides for the deductions from wages and requires all states parties to take all necessary measures to limit deductions from wages to the extent deemed necessary to safeguard the maintenance of the worker and his or her family.⁶⁶ Some deductions from the wages are allowed to compensate the loss or damage caused by the worker to the property of the employer. However, the amount of such deductions should not exceed the actual amount of the loss or damage suffered by the employer.⁶⁷ Before taking a decision to make such a deduction, the worker concerned must be given a reasonable opportunity to show cause why the deductions should not be made.⁶⁸ This procedure ensures fairness for the employees in order to avoid unnecessary, illegal and unreasonable deductions from the wages. The deductions from wages are limited to a recognised custom of the trade or occupation, collective agreement, arbitration award, national laws or regulations.⁶⁹ These safeguards exist to protect the wages of low-income earners so that they can be able to live a decent life.

The UN Guiding Principles on Business and Human Rights⁷⁰ places a duty upon the state to take measures to prevent the abuse of human rights in their territory by business enterprises. States are obliged to reduce legal and practical barriers that may deny individuals a remedy.⁷¹ Every state has a duty and responsibility to promote and respect human rights and fundamental freedoms for persons who are within its jurisdiction.⁷² The Human Rights Council Resolution 26/22 of 15 July

⁵⁹ WG Schulze, "The Origin and Legal Nature of the Stokvel (Part 1)", *SA Merc LJ* 9, issue 1 (1997): 29.

⁶⁰ *Ibid* 29.

⁶¹ Protection of Wages Conventions, 1949 (No. 95); Protection of Wages Recommendation, 1949 (No 85); UN Guiding Principles on Business and Human Rights; Human Rights Council Resolution 26/22 of 15 July 2014; *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others* Case No: 16703/14 2015 (WCC) – delivered on 8 July 2015, para 67.

⁶² *University of Stellenbosch Legal Aid Clinic and Others v. Minister of Justice and Correctional Services and Others* Case No: 16703/14 2015 (WCC) – delivered on 8 July 2015, para 67.

⁶³ Article 10 (1) of Protection of Wages Convention, 1949.

⁶⁴ Article 10 (2) of Protection of Wages Convention, 1949.

⁶⁵ *University of Stellenbosch Legal Aid Clinic and Others v. Minister of Justice and Correctional Services and Others* Case No: 16703/14 2015 (WCC) – delivered on 8 July 2015, para 69; Article 8 (1) of the Protection of Wages Convention, 1949.

⁶⁶ Article I (1) of Protection of Wages Recommendation, 1949.

⁶⁷ Article I (2) (1 & 2) of Protection of Wages Recommendation, 1949.

⁶⁸ Article I 2 (3) of Protection of Wages Recommendation, 1949.

⁶⁹ Article I (3) of Protection of Wages Recommendation, 1949.

⁷⁰ Guiding Principles on Business and Human Rights – Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011, p. 3.

⁷¹ *Ibid*, p. 27 - 28.

⁷² Human Rights Council Resolution 26/22. Human rights and transnational corporations and other businesses enterprises. (A/HRC/RES/26/22). 15 July 2014, p. 1.

2014 raises the concern of legal and practical barriers to remedies for business related human rights abuses, which may leave those aggrieved without an effective remedy, through judicial or non-judicial avenues.⁷³ States have a duty to provide victims with an effective remedy where the business enterprises abuse human rights.⁷⁴

4. Regulation of micro lending in South Africa

Micro-lenders were not regulated in South Africa before 1992 as they conducted business according to their own will and many borrowers experienced their exploitative nature.⁷⁵ They used illegal procedures to conduct their business activities. For instance, as a prerequisite for obtaining loans, micro-lenders usually took their clients' identity documents, pay slips, bank cards and personal identification number (PIN)⁷⁶ in order to withdraw a monthly amount from their clients' bank accounts to pay their loans.⁷⁷ Occasionally they provided their clients a small amount of moneys to cover their basic necessities such as food, clothes and school fees.⁷⁸ Low-income earners were left with no money to cover any other emergencies that could arise.

Since 31 December 1992, the state exempted micro loans from the *Usuary Act*⁷⁹ and there was no limit on the interest rates that micro-lenders could charge.⁸⁰ Micro-lenders had no interest ceilings which they could charge on small loans less than R6 000 with a repayment period of up to 36 months.⁸¹ This system allowed micro-lenders to provide many short term loans and charge high interest rates.⁸² Micro-lenders charged exorbitant interest rates compared to the cost of credit in the formal banking sector.⁸³ Therefore, they enriched themselves at the expenses of their clients. However, the borrowers found themselves in debt spirals due to the increased availability of loans in both formal and informal financial sectors.⁸⁴

In 1999, the government enacted the *Second Exemption to the Usuary Act* to regulate the micro-lending industry.⁸⁵ The Micro Finance Regulatory Council (MFRC) was established as a regulatory body to manage micro-lenders and prevent their harmful practices.⁸⁶ The provisions of the *Usuary Act* and capped interest rates were exempted from the loans under R10 000 which were settled with 36 month instalments and not advanced by overdraft or credit card.⁸⁷ The MFRC regulated the financial sector and protected the rights of the consumers. The low-income earners who needed to access loans had to be employed so that they could guarantee payment through their salaries. The borrowers had to be bank customers and they could pay their loans by providing a bank debit card and PIN to the lender.⁸⁸ All micro-lenders had to register with the MFRC and the lenders could not keep a consumer's bank card and PIN any more.⁸⁹ In November 2000, the National Loan Register (NLR) was established and registered lenders had to provide some information about their loans to the MFRC.⁹⁰ In order to access finance, the majority of low-income earners started borrowing funds from micro-lenders.

⁷³ Human Rights Council – Resolution Adopted by the Human Rights Council 26/22 – Human Rights and Transnational corporations and Other Business Enterprises. (A/HRC/RES/26/22) – 15 July 2014, p. 2.

⁷⁴ *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others* Case No: 16703/14 2015 (WCC) – delivered on 8 July 2015, para 74.

⁷⁵ Polly Mashigo, *op. cit.*, 2012: 34.

⁷⁶ *Ibid* 34.

⁷⁷ Michelle Kelly-Louw, "The Prevention and Alleviation of Consumer Over-indebtedness", *SA Merc LJ* 20, issue 32 (2008): 202.

⁷⁸ *Ibid* 202.

⁷⁹ Usuary Act 73 of 1968.

⁸⁰ Jonathan Campbell, *op. cit.*, 2007: 251-252.

⁸¹ Polly Mashigo, *op. cit.*, 2012: 34-35.

⁸² *Ibid* 35.

⁸³ Jonathan Campbell, *op. cit.*, 2007: 252.

⁸⁴ Polly Mashigo, *op. cit.*, 2012: 35.

⁸⁵ Michelle Kelly-Louw, *op. cit.*, 2008: 202.

⁸⁶ Polly Mashigo, *op. cit.*, 2012: 35.

⁸⁷ Michelle Kelly-Louw, *op. cit.*, 2008: 202.

⁸⁸ Polly Mashigo, *op. cit.*, 2012: 35.

⁸⁹ Michelle Kelly-Louw, *op. cit.*, 2008: 202-203.

⁹⁰ *Ibid* 203.

Micro-lenders registered with the MFRC had to comply with the provisions of the *Usury Act*, such as the interest rate limits which were between 29 and 33% per year.⁹¹ However, borrowers experienced over-indebtedness and were deeply vulnerable to the micro-lenders as they could lose their assets and rise in the cycles of indebtedness.⁹² The micro-lending sector was highly unregulated and some lenders entered the sector to exploit the low-income earners as they charged exorbitant interest rates.⁹³ Therefore, the low-income earners became over-indebted and could not pay their debts when they were due. In addition, there was a violation of banking confidentiality as the borrowers had to surrender their bank cards and disclose their PIN to the micro-lenders in order to access credit.⁹⁴ Some micro-lenders could also defraud the borrowers as they lacked experience in personal finance.⁹⁵ The low-income earners could not afford high interest rates and were unable to borrow in order to afford basic necessities such as food, education and emergencies. There was a need to enact a legislation and improve the regulation of the micro-lending industry.

The *National Credit Act*⁹⁶ (NCA) was enacted in 2006 and it repealed the previous statutes dealing with credit industry.⁹⁷ The main purposes of the NCA are to promote and advance the social and economic welfare of all South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers.⁹⁸ It seeks to improve the accessibility to credit markets for all South Africans, particularly the previously disadvantaged individuals who were unable to access credit.⁹⁹ The NCA promotes responsibilities of the credit providers and consumers in the credit market. In this regard, it seeks to encourage responsible borrowing, avoid over-indebtedness and fulfil financial obligations by the consumers.¹⁰⁰ Furthermore, the NCA discourages reckless credit granting by credit providers and contractual default by consumers; therefore promoting responsible borrowing.¹⁰¹ It promotes equity by protecting the rights and responsibilities of both credit providers and consumers.¹⁰² Finally the NCA addresses and prevents over-indebtedness of consumers, and provides mechanisms for resolving over-indebtedness based on the principle that the consumer must satisfy all his or her financial obligations.¹⁰³

The NCA established the National Credit Regulator (NCR) to enforce its provisions.¹⁰⁴ Specifically, the NCR regulates and enforces the consumer credits. It provides regulations and policy initiatives to improve access to credit to previously disadvantaged persons, low-income earners and communities located in remote areas.¹⁰⁵ Thus the NCR plays a pivotal role to ensure access to credit for low-income earners in South Africa. In addition, the National Consumer Tribunal was established to solve conflicts or disputes that can arise under the NCA.¹⁰⁶ Having discussed the legal provisions regulating the low-income earners to access credit, it is necessary to evaluate the cost of credit.

5. Cost of buying on credit

The consumers incur certain liabilities when they access credit or are allocated credit

⁹¹ Polly Mashigo, *op. cit.*, 2012: 36.

⁹² *Ibid* 37.

⁹³ *Ibid* 37.

⁹⁴ *Ibid* 37.

⁹⁵ *Ibid* 37.

⁹⁶ National Credit Act 34 of 2005.

⁹⁷ Section 172 (4) of the National Credit Act 34 of 2005. The statutes which were repealed include the Usury Act 73 of 1968, Credit Agreement Act 75 of 1980, and Integration of Usury Laws Act 57 of 1996.

⁹⁸ Section 3 of the National Credit Act 34 of 2005.

⁹⁹ Section 3 (a) of the National Credit Act 34 of 2005.

¹⁰⁰ Section 3 (c) (i) of the National Credit Act 34 of 2005.

¹⁰¹ Section 3 (c) (ii) of the National Credit Act 34 of 2005.

¹⁰² Section 3 (d) of the National Credit Act 34 of 2005.

¹⁰³ Section 3 (g) of the National Credit Act 34 of 2005.

¹⁰⁴ Preamble (long title) of the National Credit Act 34 of 2005.

¹⁰⁵ Polly Mashigo, *op. cit.*, 2012: 38; Eric Botha and Daniel Makina, "Financial Regulation and Supervision: Theory and Practice in South Africa", *International Business and Economic Research Journal* 10, issue 2, (2011): 27-36.

¹⁰⁶ Section 26 of the National Credit Act 34 of 2005.

facilities.¹⁰⁷ For each credit facility, the consumer becomes responsible for and must pay the principal debt, an initiation fee, a service fee, interest, cost of any credit insurance, default administrative charges, and collection costs.¹⁰⁸ Some of these costs are hidden or unknown to the consumers¹⁰⁹ and contribute to the growth of the debt when one buys on credit. The initiation fees, service fees, credit insurance and interest are discussed in more detail below.

5.1. The initiation fee

The initiation fee is an amount which is paid as a cost to initiate a credit agreement. The credit provider charges the initiation fee to the consumer and it must be paid when the consumer enters into the credit agreement.¹¹⁰ The initiation fee is fixed in relation to the principal debt, and does not apply unless a credit agreement is established with the consumer.¹¹¹ Currently, the initiation fee is limited to R1 000 or 15 per cent of the principal debt in terms the Regulations of the NCA.¹¹² The purpose of paying initiation fee remains unclear.¹¹³ This is because there are other charges that are imposed on the consumer in order to access credit. It is submitted that the initiation fee should be abolished to minimise the cost of entering into a credit.

5.2. The service fee

The service fee is a levy that a credit provider may charge to cover the administration cost for maintaining a credit agreement.¹¹⁴ It may be payable monthly or annually, and does not exceed the prescribed amount relative to the principal debt.¹¹⁵ In relation to a credit facility, the service fee may be paid based on a transaction or a combination of a period and transaction.¹¹⁶ The service fee is limited to R50 per month and constitutes a significant cost on small loans.¹¹⁷ The low-income earners are mostly affected by the service fees as they usually take small loans. Therefore, they have to pay exorbitant service fees whenever they take small loans in order to cover for their basic necessities of life.

Campbell questions whether it is necessary to charge service fees on small credit agreements.¹¹⁸ He argues that the interest rates should be increased appropriately in order to scrap service fees on small credit agreements and reduce the cost of credit for low-income earners.¹¹⁹ The author contends that the service fees should be charged in proportion to the amount of credit that a consumer can access. This will maintain the interests of both credit providers and consumers in the credit market.

5.3. The credit insurance

Credit insurance is an agreement between an insurer, and a credit provider or a consumer or

¹⁰⁷ Sections 100-106 of the National Credit Act 34 of 2005; Anon "Pensioner exploited?" 22 July 2015. Available at <https://www.news24.com/News24/Pensioner-exploited-20150721> (accessed on 24 March 2022).

¹⁰⁸ Section 101 of the National Credit Act 34 of 2005.

¹⁰⁹ Jurgen Schraten, "The Transformation of the South African Credit Market", *Transformation* 85 (1014): 11.

¹¹⁰ Section 1 of the National Credit Act 34 of 2005; Stefan Renke, Melanie Roestoff and Franciscus Haupt, "The National Credit Act: New Parameters for the Granting of Credit in South Africa", *Obiter* 28, no. 2 (2007): 254; Jonathan Campbell, *op. cit.*, 2007: 257, 260-262; Natasha Thandiwe Valley, "Insecurity in South African Social Security: an Examination of Social Grant Deductions, Cancellations, and Waiting", *Journal of Southern African Studies* 42, issue 2 (2016): 977, <https://doi.org/10.1080/03057070.2016.1223748>.

¹¹¹ Section 101 (b) of the National Credit Act 34 of 2005.

¹¹² Jurgen Schraten, *op. cit.*, 11.

¹¹³ Jonathan Campbell, *op. cit.*, 2007: 262.

¹¹⁴ Section 1 of the National Credit Act 34 of 2005; Stefan Renke, Melanie Roestoff and Franciscus Haupt, *op. cit.*, 2007: 254.

¹¹⁵ Section 101 (c) of the National Credit Act 34 of 2005.

¹¹⁶ *Ibid.*

¹¹⁷ Jurgen Schraten, *op. cit.*: 11; Jonathan Campbell, *op. cit.*, 2007: 262.

¹¹⁸ Jonathan Campbell, *op. cit.*, 2007: 263.

¹¹⁹ *Ibid* 263.

both whereby the insurer agrees to pay a benefit upon the occurrence of a specified contingency.¹²⁰ The purpose of the credit insurance is primarily to satisfy all or part of the liability that the consumer may owe to the credit provider under a credit agreement at the time that the specified contingency occurs.¹²¹ The credit insurance includes a credit life insurance agreement; or an agreement covering loss or damage to property; or an agreement for loss or theft of an access card, personal information number or similar device; or any effect caused by such a loss or theft of credit.¹²² Furthermore, the credit life insurance deals with “cover payable in the event of a consumer’s death, disability, terminal illness, unemployment, or other insurable risk that is likely to impair the consumer’s ability to earn an income or meet the obligations under the credit agreement”.¹²³ The credit insurance ensures that the credit provider obtains his or her moneys in case an unfortunate event occurs to the consumers. Therefore, it maintains the stability of the credit markets and sustains the economy of South Africa.

The NCA provides for credit insurance, including life insurance and different types of insurance to the consumers to ensure that they are able to satisfy their obligations under the credit agreements.¹²⁴ The cost of the credit insurance must be reasonable to the consumers to avoid unnecessary costs to maintain the credit.¹²⁵ The consumers have to choose their insurance policies to cover their obligations to credit providers.¹²⁶ In order to keep their insurance policies, they must pay monthly or annually premiums to the insurers depending on their credit agreements.¹²⁷ The credit insurance is necessary to ensure stability in the credit industry. However, the credit insurance increases the cost of accessing credit in order to cover the necessary needs.

5.4. The interest rates

The NCA does not provide the definition of interest rate. However, each consumer must pay the interest rates on the principal debt to the credit provider. The interest is expressed as an annual rate in percentage terms and is calculated in the prescribed manner.¹²⁸ The Minister of Trade and Industry, after consulting the National Credit Regulator, has power to prescribe a method of calculating a maximum interest rate applicable to each subsector of the consumer credit market.¹²⁹ When the Minister prescribes the maximum interest rate, he or she must also consider the need to make credit available to historically disadvantaged persons; conditions prevailing in the credit market; and the social impact on the low-income consumers.¹³⁰ When making regulations relating to the maximum interest rates, the Minister must establish different maximums for credit agreements for each subsector of the credit market.¹³¹ The credit providers must comply with the maximum interest rates when they allocate credit to the consumers.

The credit provider, under a credit agreement, may charge an interest to become payable or be debited at any time after the credit has been allocated to the consumer.¹³² In the case of a default or an overdue payment under a credit agreement, the credit provider cannot charge the interests that exceed the maximum interest rate applicable to the principal debt.¹³³ The NCA proscribes the credit provider from requiring payment of or debiting the interest charge to the consumer before it becomes due and payable.¹³⁴ A credit agreement may provide for variation in the interest rate and it must be

¹²⁰ Section 1 of the National Credit Act 34 of 2005.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Section 106 (1) of the National Credit Act 34 of 2005.

¹²⁵ Section 106 (2) of the National Credit Act 34 of 2005.

¹²⁶ Section 106 (4) of the National Credit Act 34 of 2005.

¹²⁷ Section 106 (4) (b) of the National Credit Act 34 of 2005.

¹²⁸ Section 101 (d) of the National Credit Act 34 of 2005.

¹²⁹ Section 105 (1) of the National Credit Act 34 of 2005.

¹³⁰ Section 105 (2) (a) – (c) of the National Credit Act 34 of 2005.

¹³¹ Section 105 (3) (a) of the National Credit Act 34 of 2005.

¹³² Section 103 (2) of the National Credit Act 34 of 2005.

¹³³ Section 103 (1) of the National Credit Act 34 of 2005.

¹³⁴ Section 103 (3) of the National Credit Act 34 of 2005.

the same in respect of any similar agreement issued by the same credit provider.¹³⁵ This is to ensure that consumers are treated in a similar manner and that there is no undue prejudice against some consumers. The NCA controls the accumulated interests and specifies that the amounts “that accrue during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs”.¹³⁶ This provision minimises debt spiral for the consumer in default payment as the interests cannot accrue beyond the principal debt. It is a codification of the common law principle of *in duplum* rule.¹³⁷

The common law *in duplum* rule is part of South African law.¹³⁸ This rule simply means “that interest stops running once unpaid interest is equal to the capital”.¹³⁹ Whenever the debtor makes payment, the interest starts to run again until it reaches the unpaid capital amount.¹⁴⁰ The *in duplum* rule is confined to arrear interest alone. It aims to protect debtors from paying more than the capital they owe at the date in which the debt is claimed.¹⁴¹ The principle alleviates the plight of overburdened debtors and prevents them from falling into debt spiral. Some debtors become over-indebted and accumulate exorbitant interests as they are unable to pay their monthly instalments.¹⁴²

Low-income earners take loans in order to maintain their lifestyle or sustain other people, specifically family members.¹⁴³ Most individuals who fall under this category are salaried employees and social grant holders as they have access to regular income.¹⁴⁴ For instance, a gardener could end up paying R18 000 for a washing machine that costed R6 000 on retail. All the debt included the price of the machine, contract fee, delivery fee, maintenance agreement, interest at 23 % per annum, customer protection insurance, and protection insurance for clients.¹⁴⁵ The credit provider (Lewis Stores) asked the client (gardener) to pay R600 deposit and he did not understand the true meaning of the contract or why he had to pay the extract costs.¹⁴⁶ Borrowers are caught up in debt spiral and experience financial distress. It is submitted that consumers are required to have financial education in order to borrow within their means.

6. Loan repayment and recovery methods

Long ago micro-lenders needed a guarantee from their clients to secure payment of the loans and they often requested them to surrender their bank cards, PIN, pay slips and identity documents.¹⁴⁷ On the pay day, creditors could use the bank card to withdraw moneys from the debtors’ accounts and discharge their debts.¹⁴⁸ In the informal sector, most lenders confiscated the borrowers’ ATM bank cards and used them to withdraw money on the pay day with exorbitant interests.¹⁴⁹ Therefore the micro-lenders used to hold the clients’ bank cards in order to secure the payment of their loans.

¹³⁵ Section 103 (4) of the National Credit Act 34 of 2005.

¹³⁶ Section 103 (5) of the National Credit Act 34 of 2005.

¹³⁷ Stefan Renke, Melanie Roestoff and Franciscus Haupt, *op. cit.*, 2007: 255; Monica L Vessio, “A Limit on the Limit on Interest? The *in Duplum* Rule and the Public Policy Background”, *De Jure* 39, no. 1 (2006): 26; WG Schulze, “Can a Borrower Waive the Benefits of the *In Duplum* Rule?”, *SA Merc LJ* 11, no. 1 (1999): 110.

¹³⁸ Monica L Vessio, *op. cit.*, 2006: 26; *ABSA Bank Ltd v Leech* 2001 4 All SA 55 (SCA); *LTA Constructions Bpt V Administrateur, Transvaal* 1992 1 SA 473 (A) 481 H; *Standard Bank of SA Ltd v Oneante Investment in Liquidation* 1998 1 SA 811 (SCA).

¹³⁹ *Sanlam Life Insurance Ltd v South African Breweries Ltd* 2000 2 SA 647 (W) 650 I.

¹⁴⁰ WG Schulze, “Can a Borrower Waive the Benefits of the *In Duplum* Rule?”, *SA Merc LJ* 11, no. 1 (1999): 110.

¹⁴¹ *Sanlam Life Insurance Ltd v South African Breweries Ltd* 2000 2 SA 647 (W) 655 D-H.

¹⁴² Deborah James, “Deductions and Counter-Deduction in South Africa” in *The Real Economy*, eds. Neiburg, F, and Guyer, JI, (Chicago: Hau Books, 2017), 60.

¹⁴³ Deborah James, “Indebtedness and Aspiration in South Africa” in *Poverty and Inequality: Diagnosis, Prognosis and Responses*, eds. Soudien, C, Woolard, I, and Reddy, V. (Cape Town: HSRC Press, 2019), 220; Natasha Thandiwe Valley, *op. cit.*, 2016: 976. <https://doi.org/10.1080/03057070.2016.1223748>.

¹⁴⁴ Deborah James, *op. cit.*, 2019, 220; Natasha Thandiwe Valley, *op. cit.*, 2016: 977.

¹⁴⁵ Deborah James, “Deductions and Counter-Deduction in South Africa” in *The Real Economy*, eds. Neiburg, F, and Guyer, JI, (Chicago: Hau Books, 2017), 60.

¹⁴⁶ *Ibid* 60.

¹⁴⁷ Polly Mashigo, *op. cit.*, 2012: 34.

¹⁴⁸ *Ibid* 34.

¹⁴⁹ Deborah James, *op. cit.*, 2019, 219; Deborah James, “Deeper Into a Hole? Borrowing and Lending in South Africa”, *Current Anthropology* 55, Supplement 9 (August 2014): s27.

This system has been outlawed as it constituted a violation of the rights of the customers or clients. However, some micro-lenders still confiscate the debtors' ATM card and identity documents in order to secure payment of the loans.¹⁵⁰ This is an unfortunate situation for the debtors as they experience exploitation and abuse in the informal financial sector.

Creditors use garnishee orders to get monthly repayment of the loans from the debtors' salary; and this constitutes the most efficient mechanism for collection.¹⁵¹ Garnishee orders are reliable in the credit industry as they are most successfully used to ensure loans' repayment from debtors who work in the public sector.¹⁵² The debtors must consent to the deductions from their salaries in order to ensure the success of the garnishee orders.¹⁵³ In simple terms, a garnishee order is an instruction from the court requesting the debtor's employer to deduct a specific amount, on a monthly basis, from the debtor's salary in order to pay the creditor.¹⁵⁴ Sometimes garnishee orders are also referred to as emolument attachment orders (EAOs).¹⁵⁵ They are used as a collection mechanism to recover the payment of loans from the debtors.

The EAOs have been abused by unscrupulous creditors to recover their moneys in a way that marginalises and exploits the debtors.¹⁵⁶ This has culminated in a landmark Constitutional Court judgment in *University of Stellenbosch Legal Aid Clinic v. Minister of Justice and Correctional Services*.¹⁵⁷ In the majority judgment, Comeron J held that sections 65 J (2) (a) and section 65 J (2) (b) (i) of the *Magistrates' Court Act*¹⁵⁸ were invalid to the extent that they authorised the issuing of EAOs without judicial supervision; and ordered severance and reading-in to ensure the required judicial supervision.¹⁵⁹ Before authorising an EAO, the court had to satisfy itself that it was just and equitable and the amount was appropriate.¹⁶⁰ This judgment provided relief to the low-income earners who faced or experienced EAOs in order to pay for their loans.

Zondo J, in a concurring judgment, indicated that there was no judicial oversight where the judgment debtor consented in writing for the issuing of EAOs.¹⁶¹ This was inconsistent with the right of access to court and constitutionally invalid as the court could not intervene to ascertain whether the EAOs were fair and appropriate.¹⁶² The clerk of the court was authorised to confirm the EAO whenever the debtor has given his or her consent in this regard. The system was open to abuse as the creditors could easily obtain the EAOs against low-income earners debtors. There was a need for the

¹⁵⁰ Deborah James, *op. cit.*, 2017, 57.

¹⁵¹ Kabelo Moloanta and Florinda Taute, "The Effect of Garnishee Orders on the Personnel of the Department of Health, South Africa", *Journal of Workplace Behavioral Health* 31, issue 3 (2016): 173, <https://doi.org/10.1080/15555240.2016.1175308>.

¹⁵² *Ibid* 173.

¹⁵³ *Ibid* 174.

¹⁵⁴ *Ibid* 174.

¹⁵⁵ Stephan Van der Merwe, "Traversing the South African Emolument Attachment Order Legal Landscape Post 2016: Quo Vadis?", *Stell LR* 30, no. 1 (2019): 78. There is a slight difference between garnishee orders and EAOs. The Term garnishee orders is used to describe an order empowering the creditor to attach any debt owed to the creditor by a third party, and EAOs are the specific forms of garnishee orders that apply to the relationship between employer and employee.

¹⁵⁶ *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others* 2015 5 SA 221 (WCC); *University of Natal, Pietermaritzburg v Ziqubu* 1999 2 SA 128 (W); *Minter NO v Baker* 2001 3 SA 175 (W); *MBD Securitisation (Pty) Ltd v Booï* 2015 5 SA 450 (FB); Kimberly Nienaber, "Emoluments attachment orders in South African law" (LLM diss., University of Pretoria, 2015), 20; Abongile Athi Swana "Emoluments attachment orders: In Light of Widespread Fraudulent and Undesirable Practices in Emoluments Attachment Orders Should this Debt Collection Mechanism Continue to Exist?" (LLM diss., University of KwaZulu-Natal, 2015), 65 - 75; Frans Haupt and Hermie Coetzee, "The Emoluments Attachment Order and the Employer" in *Employee Financial Wellness: a Corporate Social Responsibility*, ed. Elsa Crous, (South Africa: GTZ, 2008), 87 - 89; Jannie Otto, "The Impact of the National Credit Act on Consent to Jurisdiction in Terms of the Magistrates' Courts Act - University of Stellenbosch Legal Aid Clinic v Minister of Justice and Correctional Services 2015 5 SA 221 (WCC), MBD Securitisation (Pty) v Booï 2015 5 SA 450 (FB)", *THRHR* 80 (2017): 141-142; Clark Gardner, "The Complexity of Emolument Attachment Orders," *HR Highway*, (October 2007): 21.

¹⁵⁷ *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others; Association of Debt Recovery Agents NPC and Others v University of Stellenbosch Legal Aid Clinic and Others; Mavara Trading 279 (Pty) Ltd v University of Stellenbosch Legal Aid Clinic and Others* 2016 6 SA 596 (CC).

¹⁵⁸ Magistrates' Court Act 32 of 1944.

¹⁵⁹ *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others; Association of Debt Recovery Agents NPC and Others v University of Stellenbosch Legal Aid Clinic and Others; Mavara Trading 279 (Pty) Ltd v University of Stellenbosch Legal Aid Clinic and Others* 2016 6 SA 596 (CC), paras 209-211.

¹⁶⁰ *Ibid* para 211.

¹⁶¹ *Ibid* para 195.

¹⁶² *Ibid* para 203.

legislature to intervene and rectify the situation in order to protect the debtors against the harsh practices of the creditors.¹⁶³

Parliament enacted the *Courts of Law Amendment Act (CLA)*¹⁶⁴ to, *inter alia*, regulate the issuing of EAOs and prescribe offences and penalties relating to EAOs. This Act empowers only a magistrate to issue EAOs. In exercising this right, he or she has to consider a debtor's circumstances and determine the appropriate monthly deductions from the salaries and he or she has to ensure that the order is just and equitable.¹⁶⁵ In order to protect the debtor, the CLA limits the total instalment amount deductible in terms of EAOs to 25 % of the debtor's basic gross net monthly salary.¹⁶⁶ This is a huge improvement in the lives of the low-income earners as they can use the rest of their salaries (75 %) to satisfy their basic needs. Creditors are no longer able to deduct more moneys from the debtor's income or salary than the legally prescribed amount. The next section deals with what happens to the debtors when they become over-indebted.

7. Consequences of over-indebtedness

Micro-lenders exploit the low-income earners and lead them into debt spirals with emotional and financial distress.¹⁶⁷ Debt spiral exists when debtors use more than 50 % of their monthly income to repay their loans and take loans to settle other loans.¹⁶⁸ In this regard, debtors become over-indebted and are unable to pay their loans when they are due. This has a negative impact in the lives of the borrowers concerning their financial issues and does not protect the economic sector of the country. Individuals who are over-indebted live in debt spirals and are unable to acquire their basic needs.

Over-indebtedness can lead people to resign from their jobs so that they can be able to access moneys in their pensions in order to repay their debts.¹⁶⁹ Furthermore, debtors often switch bank accounts to escape creditors.¹⁷⁰ In some extreme cases, over-indebtedness can lead to the propensity to commit theft and family suicide.¹⁷¹ Therefore, it is necessary for all persons to live within their means and take all appropriate steps in order to avoid falling in circumstances where they become over-indebted. Financial education is crucial to preclude persons from being over-indebted.

8. Concluding remarks

Low-income earners in South Africa have limited access or no access to formal financial institutions, especially banks, due to collateral constraints, asymmetric information and high transaction costs. As a result, they use the informal financial sector to get access to credit and cover their needs. Micro-lenders are important aspects in assisting the households or communities to get

¹⁶³ *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others* 2015 5 SA 221 (WCC); Stephan Van der Merwe, *op. cit.*, 2019: 79.

¹⁶⁴ Courts of Law Amendment Act 7 of 2017. The purpose of the Act is: To amend the Magistrates' Courts Act, 1944, as to insert definitions; to regulate the rescission of judgments where the judgment debt has been paid; to further regulate jurisdiction by consent of parties; to regulate the factors a court must take into consideration to make a just and equitable order; to further regulate the payment of debts in instalments or otherwise; to further regulate consent to judgments and orders for the payment of judgment debts in instalments; to further regulate offers by judgment debtors after judgment; to further regulate the issuing of emoluments attachment orders; to further regulate debt collection proceedings pursuant to judgments granted by a court for a regional division; to further regulate the suspension of execution of a debt; to further regulate the abandonment of judgments; and to provide for certain offences and penalties relating to judgments, emoluments attachment orders and instalment orders; to amend the Superior Courts Act, 2013, so as to provide for the rescission of judgments by consent and the rescission of judgments where the judgment debt has been paid; and to provide for matters connected therewith. See also section 65 J of the Magistrates' Court Act 32 of 1944 (EAOs).

¹⁶⁵ Sections 7 – 8 of Courts of Law Amendment Act 7 of 2017, section 65 J of Magistrates' Court Act 32 of 1944; Stephan Van der Merwe, *op. cit.*, 2019: 89-90.

¹⁶⁶ Sections 7–8 of Courts of Law Amendment Act 7 of 2017, sections 65 J of Magistrates' Court Act 32 of 1944; Stephan Van der Merwe, *op. cit.*, 2019: 90.

¹⁶⁷ Polly Mashigo, *op. cit.*, 2012: 38-39.

¹⁶⁸ *Ibid* 43.

¹⁶⁹ Deborah James, *op. cit.*, 2019, 226.

¹⁷⁰ *Ibid* 226.

¹⁷¹ Polly Mashigo, *op. cit.*, 2012: 44; Deborah James, *op. cit.*, 2019, 226.

access to credits. Micro-lenders, particularly in South African townships, play an important role by providing credits to the low-income households who are marginalised by the formal financial institutions. These lenders use exploitative practices and methods in conducting lending and borrowing businesses. The cost of credit includes, apart from paying the principal debt, initiation fee, service fee, credit insurance and interest rates. Financial education is needed for low-income earners. Reckless credit should be avoided and where it occurs, it should be written off. This creates a duty for both consumers and credit providers to ensure that there is no reckless lending and ascertain that individuals live within their means and take necessary or affordable loans. There is a dire need to regulate low interest rates for micro-lenders in order to protect low-income earners from being exploited when they access credit.

The institution of stokvel plays a crucial role in enabling low-income earners to get access to finance on a rotation basis. Sometimes stokvels also promote individuals, who are excluded from the formal financial sector, to access credit. Stokvels provide strategies to accumulate funds that can be used to acquire essential goods and services for members. Burial society stokvels provide funds to the family of the deceased in order to afford a decent burial to the departed ones. They provide the insurance option to access necessary finance in order to bury the deceased with dignity. The idea of stokvels should be promoted to allow low-income earners to get access to finance. This will facilitate low-income earners to solve some of the financial challenges that they face. Furthermore, the formal financial sector should allow low-income earners to get access to necessary and affordable credit.

Bibliography

1. *ABSA Bank Ltd v Leech* 2001 4 All SA 55 (SCA).
2. Anon. Pensioner exploited? 22 July 2015. Available at <https://www.news24.com/News24/Pensioner-exploited-20150721> (accessed on 24 March 2022)
3. Anon. Stokvels: a *Mechanism of Informal Social Security*. 28 November 2019. Available at <https://fwblaw.co.za/stokvels-a-mechanism-of-informal-social-security/> (accessed on 24 March 2022).
4. Botha, Erika and Daniel Makina. "Financial Regulation and Supervision: Theory and Practice in South Africa." *International Business and Economic Research Journal* 10, issue 11 (2011): 27–36.
5. Campbell, Jonathan. "The Excessive Cost of Credit on Small Money Loans under the National Credit Act 34 of 2005." *SA Merc LJ* 19, issue 3 (2007): 251–271.
6. Chitimira, Howard. "Historical Aspects of the Statutory Regulation of Financial Inclusion for the Poor and Low-Income Earners in South Africa." *AUDE* 16, issue 5 (2020): 269–284.
7. *Courts of Law Amendment Act* 7 of 2017.
8. Department of Housing (DOH) 1994. White Paper. A new housing policy and strategy in South Africa, Government Gazette No. 16178, Pretoria.
9. Gardner, Clark. "The Complexity of Emolument Attachment Orders." *HR Highway* (October 2007): 21–23.
10. Haupt, Frans and Hermie Coetzee. "The Emolument Attachment Orders and the Employer." In *Employee Financial Wellness: a Corporate Social Responsibility*, edited by Crous Elsa, 81 – 92, South Africa: GTZ, 2008.
11. Hull, Elizabeth. "Banking in the Bush: Waiting for Credit in South Africa's Rural Economy." *Africa: Journal of the International African Institute* 82, issue 1 (2012): 168–186.
12. Human Rights Council – Resolution Adopted by the Human Rights Council 26/22 – Human Rights and Transnational Corporations and Other Business Enterprises. (A/HRC/RES/26/22) – 15 July 2014.
13. Hurwitz, Ingrid and John Luiz. "Urban Working Class Credit Usage and Over-Indebtedness in South Africa." *Journal of Southern African Studies* 33, issue 1 (2007): 107–131.
14. James, Deborah, "Deductions and Counter-Deductions in South Africa." In *The Real Economy*, edited by Nieburg, F, and Guyer, JI, 47 – 75, Chicago: Hau Books, 2017.
15. James, Deborah. "Deeper Into a Hole? Borrowing and Lending in South Africa." *Current Anthropology* 55, Supplement 9 (August 2014): s17–s29.
16. James, Deborah. "Indebtedness and Aspiration in South Africa." In *Poverty and Inequality: Diagnosis, Prognosis and Responses*, edited by Soudien, C, Woolard, I, and Reddy, V, 214–231, Cape Town: HSRC Press, 2019.
17. Karley, Noah Kofi. "Challenges in Mortgage Lending for the Under Served in South Africa." *Housing Finance International* (September 2003): 27–33.
18. Kelly-Louw, Michelle. "The Prevention and Alleviation of Consumer Over-indebtedness." *SA Merc LJ* 20, issue 2 (2008): 200–226.
19. Kritzinger, JNJ. "African Cultural Resources in the Struggle Against Mammon – The Challenge of Stokvels to the Mission of the Church." *Mission Studies* XIII 1 & 2, 25 & 26 (1996): 109–129.

20. *LTA Constructions Bpt V Administrateur, Transvall* 1992 1 SA 473 (A).
21. *Magistrates' Court Act* 32 of 1944.
22. Mashigo, Polly. "The Vending Practices of Township Micro-lenders and their Impact on the Low-Income Households in South Africa: a Case for Mamelody Township." *New Contree* 65 (2012): 23–46.
23. Matuku, Sally and Edwell Kaseke. "The Role of Stokvels in Improving People's Lives: the Case in Organge Farms, Johannesburg, South Africa." *Social Work/Maatskaplike Werk* 50, no. 4 (2014): 504–515, <http://dx.doi.org/10.15270/50-4-388>.
24. Maumbe, Blessing Makabeta. "Digital Financial Service Delivery to Poor Communities in South Africa: A Preliminary Assessment." *International Review of Business Research Papers* 2, issue 2 (2006): 72–79.
25. *MBD Securitisation (Pty) Ltd v Booi* 2015 5 SA 450 (FB).
26. *Minter NO v Baker* 2001 3 SA 175 (W).
27. Mkhwanazi, Nobantu. "Accelerating Financial Inclusion in South Africa: Are Online Stokvels the Answers?" August 2022. Available at https://www.usb.ac.za/usb_insights/accelerating-financial-inclusion-in-south-africa-are-online-stokvels-the-answer/ (accessed on 24 March 2022).
28. Mohane, Happy, Gerhard Coetzee and William Grant, "The Effects of the Interest Rate Ceilings on the Micro Lending Market in South Africa", *Agrekon* 39, issue 4 (2000): 730–738, <https://doi.org/10.1080/03031853.2000.9523688>.
29. Moloantoa, Kabelo and Florinda Taute. "The Effect of Garnishee Orders on the Personnel of the Department of Health, South Africa." *Journal of Workplace Behavioral Health* 31, issue 3 (2016): 173–188.
30. *National Credit Act* 34 of 2005.
31. Nienaber, Kimberly. "Emoluments Attachment Orders in South African Law." LLM diss., University of Pretoria, 2015.
32. Otto, Jannie. "The Impact of the National Credit Act on Consent to Jurisdiction in Terms of the Magistrates' Courts Act – University of Stellenbosch Legal Aid Clinic v Minister of Justice and Correctional Services 2015 5 SA 221 (WCC); MBD Securitisation (Pty) v Booi 2015 5 SA 450 (FB)." *THRHR* 80 (2017): 140–147.
33. Pillay, A and Naude, WA. "Financing Low-Income Housing in South Africa: Borrower Experiences and Perceptions of Banks." *Habitat International* 30, issue 4 (2006): 872–885, <https://doi.org/10.1016/j.habitatint.2005.03.001>.
34. Protection of Wages Conventions, 1949 (No. 95).
35. Protection of Wages Recommendation, 1949 (No. 85).
36. Renke, Stefan, Melanie Roestoff and Franciscus Haup. "The National Credit Act: New Parameters for the Granting of Credit in South Africa." *Obiter* 28, no. 2 (2007): 229–270.
37. *Sanlam Life Insurance Ltd v South African Breweries Ltd* 2000 2 SA 647 (W).
38. Schulze, WG. "Can a Borrower Waive the Benefits of the In Duplum Rule?" *SA Merc LJ* 11, issue 1 (1999): 109–117.
39. Schulze, WG. "The Origin and Legal Nature of the Stokvel (Part 1)." *SA Merc LJ* 9, issue 2 (1997): 18–29.
40. Schulze, WG. "The Origin and Legal Nature of the Stokvel (Part 2)." *SA Merc LJ* 9, issue 2 (1997): 153–170.
41. Scraten, Jurgen. "The Transformation of the South African Credit Market." *Transformation* 85 (2014): 1–20.
42. *Standard Bank of SA Ltd v Oneante Investment in Liquidation* 1998 1 SA 811 (SCA).
43. Swana, Abongile Athi. "Emoluments Attachment Orders: in Light of the Widespread Fraudulent and Undesirable Practices in Emoluments Attachment Orders Should this Debt Collection Mechanism Continue to Exist?" LLM diss., University of KwaZulu-Natal, 2015.
44. Tomlinson, Marry R. "The Development of Low-Income Housing Finance Sector in South Africa: Have We Finally Found a Way Forward?" *Habitat International* 31, issue 1 (2007): 77–89, <https://doi.org/10.1016/j.habitatint.2006.04.004>.
45. UN Guiding Principles on Business and Human Rights - Human Rights Council Resolution 26/22 of 15 July 2014.
46. UN Guiding Principles on Business and Human Rights – Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011, pp 1–35.
47. *University of Natal, Pietermaritzburg v Ziqubu* 1999 2 SA 128 (W).
48. *University of Stellenbosch Legal Aid Clinic and Others v. Minister of Justice and Correctional Services and Others* Case No: 16703/14 2015 (WCC) – delivered on 8 July 2015.
49. *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others; Association of Debt Recovery Agents NPC and Others v University of Stellenbosch Legal Aid Clinic and Others; Mavara Trading 279 (Pty) Ltd v. University of Stellenbosch Legal Aid Clinic and Others* 2016 6 SA 596 (CC).
50. *University of Stellenbosch Legal Aid Clinic v. Minister of Justice* 2015 5 SA 221 (WCC).
51. Vally, Natasha Thandiwe. "Insecurity in South African Social Security: an Examination of Social Grant Deductions, Cancellations, and Waiting." *Journal of Southern African Studies* 42, Issue 5 (2016): 965–982.
52. Van der Merwe, Stephan. "Traversing the South African Emolument Attachment Order Legal Landscape Post 2016: Quo Vadis?" *Stell LR* 30, no. 1 (2019): 77–96.
53. Verhoef, Grietjie. "Informal Financial Service Institutions for Survival: African Women and Stokvels in Urban

- South Africa, 1930 – 1998.” *Enterprise & Society* 2, issue 2 (2001): 259–296.
54. Vissio, Monica L. “A Limit on the Limit on Interest? The in Duplum Rule and the Public Policy Background.” *De Jure* 39, no. 1 (2006): 25–36.