

**COUNCIL FOR DEBT COLLECTORS  
COUNCIL IN TERMS OF ACT 114 OF 1998**

Case Number: 8/6 FREE 001/06

8/6 FREE 002/06

8/6 FREE 003/06

In the matter:

**COUNCIL FOR DEBT COLLECTORS THE COUNCIL**

**and**

**FREEDOM MADAU RESPONDENT**

**(Trading as Madau and Associates)**

**NOTICE BY THE COUNCIL FOR DEBT COLLECTORS IN TERMS OF  
REGULATION 7(8)(a) OF THE REGULATIONS RELATING TO DEBT  
COLLECTORS, 2003**

**WHEREAS** the respondent is a person carrying on business as a debt collector  
**AND WHEREAS** allegations of improper conduct were submitted to the Council  
for Debt Collectors (herein after referred to as "the Council") by messrs. Patrick  
Tshikalange, Risimati Robert Chauke and Ndanduleni Enos Tshikhwalinha

**NOW THEN TAKE NOTICE THAT:**

The Council decided to charge the respondent with improper conduct as per the  
annexed charges.

**TAKE FURTHER NOTICE THAT:**

In terms of Regulation 7(9) you must furnish the Council **within 14 days of  
service of this notice** with a written admission or denial of the charges. Upon  
admission of the charges, the Council shall deal with the matter as contemplated in  
Section 15(3) of the Act (Act 114  
of 1998).

You are also required to furnish a physical address (not a postal address or poste  
restante) where you will accept service of process and notices in this matter.

**disciplinary inquiry report 2009**

FREEDOM MADAU 2009(1)CDC171

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INVESTIGATION IN TERMS OF SECTION 15(2), ACT 114 / 1998  
ONDERSOEK i.g.v ARTIKEL 15(2), WET 114/ 1998

1. Held at **Pretoria** on 21/01/2009

Gehou te \_\_\_\_\_ op \_\_\_/\_\_\_/20\_\_

2. Investigating Committee (Sect 15(2) and Reg 7(1)(a))

Ondersoek Komitee (Art 15(2) en Reg 7(1)(a))

Chairman / Voorsitter **Adv. J. Noeth SC**

Member / Lid **Me Shirley Machaba**

Member / Lid **Mr Willie Henegan**

3. Particulars of Debt Collector(s) charged /

Besonderhede van Skuldinvorderaar(s) aangekla

**a) Freedom Madau (trading as Madau and Associates).**

4. Person appointed to lead evidence (Reg 7(8)(b))

**Adv Thys Gildenhuis**

Persoon aangestel om getuienis te lei (Reg 7(8)(b)) \_\_\_\_\_

5. Particulars of person(s) appearing on behalf of Debt Collector(s) /

Besonderhede van persone wat namens Skuldinvorderaar(s) verskyn

**(a) Freedom Madau**

6. Charge(s) / Klagte(s)

As per chargesheet annexed hereto /

Soos per klagstaat hierby aangeheg.

7. Plea / Pleit:

**Not guilty (in his absence)**

8. The proceedings are recorded by mechanical means/

Die verrigtinge word meganies opgeneem

9. Finding/Bevinding:

**Guilty: Counts 1 and 2**

10. Sentence / Vonnis:

**1. Respondent is in terms of section 15(3)(e) of the Debt Collectors Act**

**2. ordered to reimburse the Council in an amount of R 49130.75 for the costs incurred by the Council in connection with the investigation. The full amount must be paid to the Council on or before 22 January 2009.**

**3. The Respondent is in terms of section 15(3)(f) of the Act ordered to reimburse –**

**a. Patrick Tshikalange an amount of R22482.00**

**b. Risimati Robert Chauke an amount of R12600.00 on or before 23 January 2009**

**c. and to furnish the Council on or before 26 January 2009 with proof of such reimbursements.**

**4. In terms of section 15(3)(c) of the Act the Respondent is fined as follows:**

**a. Count 1: R 30 000.00**

**b. Count 2: R 20 000.00**

**These amounts are payable on or before 23 January 2009.**

**It is further directed that Mr Freedom Madau cannot be registered in any capacity as a debt collector as from 21 January 2009.**

**It is also directed that an advert must be placed on the earliest opportunity in a local newspaper in Thoyandou, in bold in English and Venda, that Mr Madau is not a registered debt collector and he is therefore forbidden to act in any capacity as a debt collector and cannot collect any money from the public as a debt collector.**

**The fact of his conviction and sentence must be reflected on the Council's website and it must also be reflected that he cannot do debt collecting in any capacity.**

#### **JUDGMENT:**

On 30 May 2008 Mr Freedom Madau suddenly arrived at the Council's offices and he appeared before the Chairman of the Committee appointed to hear the matter. He was informed of the proceedings on 12 March 2008 and why the matter was proceeded with in his absence. He was asked why he did not appear on the 30th May 2008. He admitted that summons was served on him for the hearing on 12 March 2008. He did not appear however because his name was not correctly reflected on the summons. He asked that he be pardoned for not appearing on the said date.

He was told that the matter is set down for the continuation of the enquiry on the next Monday, 2 June 2008.

He asked for a remand because he needed more time to prepare for the case and to study all the evidence.

He was granted a remand and it was stated to him that this was a final remand and if he fail to appear on 2 and 3 July 2008 in the Tusk Hotel at Thohoyandou the hearing will continue in his absence.

On the resumption of the hearing in the Tusk Hotel at Thohoyandou on 2 July 2008 Mr Freedom Madau was again not present. It was again directed that the hearing must continue in the absence of Mr Madau.

Joyce Mabatha testified under oath and said she is staying with Mr Patrick Chikalange as her husband. She was involved with the Thivhani Tshikhala Old Age Home. They gave money to Madau who in turn gave it to people at the old age home.

She handed exhibit K in which consists of three separate pages. She also compiled a list of the names of the people that the moneys were given to. The list is handed in as Annexure L. She said that she made the cash withdrawals reflected on list L and gave them to the Respondent personally to hand them to the various people reflected on the list.

Mr Chikalange Thivhani Patrick was recalled and said that he and Mrs Mabatha were "in one business". He identified the persons named in exhibit I at page 6 as the persons and amounts named under Charge 1.

He explained that he did not give Freedom Madau money in the amounts as reflected on the charge sheet. He said some of the people mentioned in the charge sheet sold mieliemeal on his behalf but they did not pay him. He then went to Freedom Madau as a "lawyer" to collect the money for him. But Madau did not bring the money to him which he had collected. In some instances he was provided with receipts which was given to them by Freedom Madau when

they paid him in respect of the debts. Three of these receipts appear on page 5 of annexure "I". He identified the amounts reflected on the receipts with the names and amounts reflected on the charge sheet under items 6, 7 and 8. Others paid by garnishee orders. Page 8 of exhibit "I" was handed to him by Freedom Madau as persons who paid by garnishee orders. In this regard he identified Sithagu, Ramuregi and Makuya. He did not know how the amount of R4998,60 reflected as petty cash on page 6 of exhibit "I" was compiled.

He said he spoke to Freedom several times regarding the amounts reflected in charge 1 of the charge sheet and on page 6 of exhibit "I". Freedom admitted he received the amounts and he said that "he was going to pay me".

Joyce Mabatha was recalled and she was referred to item 5 on the charge sheet under count 1. She said she established from a bank statement of Freedom Madau which he gave her which indicated the names and the amount of money of people who paid him that this amount was paid into his bank account. The amount was R4375,00. Freedom Madau has not repaid this amount.

The matter resumed on 4 August 2008 at Pretoria. Attempts were in the meantime again made to communicate with Mr Madau by faxing information to him and also sending the same information by registered mail. These documents are handed in as exhibit M.

Anna Maria Bronkhorst an employee of the Department of Water Affairs and Forestry, said she is a Chief Accounting Clerk in the salary office at the Department.

Her duties entail that she authorizes deductions on the staff's salaries. She said a deduction was implemented on the salary of Mr RR Chauke (salary number 16508085305) for the 1st of October 2003 in an amount of R300,00. The amount was deducted in favour of Controllers Risk Pretoria and the beneficiary code was 0522 with reference number FRA55506. This deduction went through on his salary until 30 April 2006. Another deduction was implemented on his salary from the 1st August 2005 under the reference number FR/ASS4450 for an amount of R400,00 per month. This deduction also went through on his salary until 30 April 2006. The beneficiary was Control Risk Pretoria and it changed to Freedom and Associates in October 2003 when the first deduction was made. All subsequent payments were made to Freedom and Associates. The transaction was implemented at the Departments' Limpopo Office. She said that with the exception of garnishee orders, they must first get the consent of the employee before a deduction is made. In the case of garnishee orders they have no choice but to implement them because it is coming from the court. She did not see these garnishee orders. She handed in exhibit N which is called "salary advices" which consists of 36 pages.

Mr Mpho Mabungu is stationed at Polokwane Regional Office and is a Senior State Accountant. He investigated the deductions which were made from Mr Chauke's salary account with the persal number 16508530. He fetched his file from the Magistrate at Dzanani where Mr Chauke is now working. He found the original emolument attachment order with case number 839/03. The deduction was for R300,00 per month. The total amount owing was R6020,00. The creditor indicated on this order is Freedom and Associates at Thohoyandou Capitec Bank Building Box 7508, Thohoyandou 0950. The reference on it is ASS506. A copy of this document is handed in as exhibit O.

He got another document with number 839/03 from the Magistrate at Dzanani. Paragraph 2 of this document reads as follow:

"The Global Development CC versus Chauke, Risimati Robert"

- The above matter refers

- In abovemetnioned case judgment was taken at Magistrate, Dzanani on 2003-09-09."

A copy of this document was handed in as exhibit P.

He also traced another garnishee order with the case number 2896/05.

The judgment creditor is again Freedom and Associates. This order was issued at the Magistrate Vuwani. This is in respect of a micro loan which originated from Uni Bank. The judgment debtor is RR Chauke. His employee number is 16508530. The order was for R400,00 per month and the total amount for the judgment was R3800,00. It is dated 18 July 2005. This document is handed in as exhibit Q.

Another document on file with the case number 2896/05 reads as follow:

"This is to certify that garnishee order case number 2896/05 dated the 18th day of July 2005, was issued at Vuwani magistrate's office and it was against Mr Chauke RR persal number 16508530."

This letter was addressed to the Department of Water Affairs and Forestry, Polokwane. It is handed in as exhibit "R".

Exhibit S is a schedule dated 31 October 2003 which reflects all the people who is garnished by a beneficiary. The garnished person is RR Chauke with persal number 16508530 and the effective date is 31 October 2003. The beneficiary is Freedom and Associates, P O Box 7508, Thohoyandou, 0950. The amount must be deposited with Standard Bank with account number 437452344. The payment was made electronically.

Similar particulars are applicable to an amount of R400,00 dated 1 August 2005. It was the same bank and bank number as the depositing institution and the same beneficiary.

Mrs Ronel Joubert, the Systems Manager for the Council of Debt Collectors said that Freedom Madau applied to be registered as a debt collector on 21 July 2004. His work address is reflected as No 4, Capitec Bank Building, Thohoyandou, Limpopo. The postal address is P O Box 7508, Thohoyandou. The business will be conducted under Freedom and Associates. The trust account is reflected as First National Bank with the account number 02000027344. The application was signed on 15 July 2004 and the application was approved on 26 July 2004. His application was withdrawn on 16 January 2006 due to his annual fee not being paid.

His qualification is reflected as standard 10 and it does not reflect any legal qualifications.

Mr Andries Cornelius is a legal officer of the Council who handles and investigates complaints. He describes the procedure when a complaint is received. He investigated a complaint against and described the procedure he followed to bring the complaint to the debt collector's attention. The complaint to the debt collector was dated 28 March 2006. This letter is handed in as exhibit V. He also referred Mr Chauke's complaint to Freedom and Associates. He responded to this complaint on 7 August 2006.

He did not respond on the first complaint. It was handed in as exhibit "C".

Adv Gildenhuys asked for an amendment to Exhibit A that the amount reflected under exhibit "A" be changed to reflect R27589,90 and not R275899,00. In respect of charge 5 he said he is not asking for a conviction on charges 5 and 3. He just ask for a conviction on charges 1 and 2.

In respect of the first charge there is no proof of the amount of R4998,90.

The Respondent was convicted on counts 1 (with the exception of the R4998,90 which is reflected as petty cash) on 2.