

IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION

Case number: NCT/38604/2016/140(1)

In the matter between:

NATIONAL CREDIT REGULATOR

- APPLICANT

and

KAGISO FINANSIELE DIENSTE cc

- RESPONDENT

Coram:

Ms P. Beck – Presiding Member
Mr F Sibanda– Tribunal Member
Prof B Dumisa– Tribunal Member

Date of Hearing: 21 July 2016

JUDGMENT AND REASONS

(and A SETTLEMENT AGREEMENT between the Parties)

THE APPLICANT

1. The Applicant in this matter is the National Credit Regulator (*"the NCR"* or *"the Applicant"*), a juristic person established in terms of Section 12 of the National Credit Act, 2005 (*"the Act"*).
2. The Applicant's Founding Affidavit, dated the 25th of January 2016, is deposed to by **Jacqueline Boucher** (*"Boucher"*), in her capacity as the Manager of Investigations and Enforcement unit of the Applicant.

THE RESPONDENT

3. The Respondent is **Kagiso Finansiële Dienste cc**, a close corporation registered in the Republic of South Africa with company registration number 2003/106800/23, and is also a registered credit provider with the NCR with registration number NCRCP204¹ **"the Respondent."**
4. The Respondent has its place of business at 95 Nelson Mandela Street, Bloemfontein, in the Free State Province.
5. The Respondent's answering affidavit dated 18 March 2016; was deposed by **Mr. Marius Botha**, who is the Manager for the Respondent.

THE ISSUE TO BE DECIDED

6. This is an application in terms of Section 140(1) of the Act. This complaint is contained in a referral contained in National Credit Regulations Form 32, (page 3-6 of case file); signed by **Jacqueline Boucher**, a Manager: Investigations and Enforcement of the Applicant, on **29 January 2016**.
7. According to referral to the Tribunal by Boucher dated **29 January 2016**.; the issues to be decided in this case, is, therefore:
 - 7.1 Whether the Respondent contravened section 80(1)(b)(i) of the NCA
 - 7.2 Whether the Respondent contravened section 81(2)(a)(ii) of the NCA;
 - 7.3 Whether the Respondent contravened section 81(2)(a)(iii) of the NCA;
 - 7.4 Whether the Respondent contravened section 81(3) of the NCA;
 - 7.5 Whether the Respondent contravened section 91(a) of the NCA;
 - 7.6 Whether the Respondent contravened section 100(1)(c) of the NCA;
 - 7.7 Whether the Respondent contravened section 101(1)(c) of the NCA
 - 7.8 Whether the Respondent contravened section 102(1) of the NCA
 - 7.9 Whether the Respondent contravened section 170 of the NCA;
 - 7.10 Whether the Respondent contravened Regulation 44 of the NCA; and
 - 7.11 Whether the Respondent contravened Regulation 55(1)(b)(vi) of the NCA.

PRAYERS OF THE APPLICANT

8. In the event that the Tribunal finds against the Respondent, the Applicant has also prayed for:
 - 8.1 The Tribunal to then declare that the Respondent has **repeatedly** contravened the Act as catalogued above, which amounts to prohibited conduct in terms of section 150(a) of the Act.
 - 8.2 An order interdicting the Respondent from committing future breaches of the Act.
 - 8.3 An order imposing an administrative fine against the Respondent in the sum of R1 000 000, 00 (one million South African Rand).

¹ Since 20 June 2007

- 8.4 Any further / alternative relief that the Tribunal may consider appropriate to give effect to the consumer's rights in terms of the Act in line with section 150(i) of the Act.

JURISDICTION OF THE TRIBUNAL

9. This Tribunal has the requisite jurisdiction to deal with this matter. Section 27 of the Act confers the Tribunal or a member of the Tribunal acting alone in accordance with this Act the jurisdiction and discretion to:

- (a) adjudicate in relation to any-
 - (i) application that may be made to it in terms of this Act, and make any order provided for in this Act in respect of such an application; or
 - (ii) allegations of prohibited conduct by determining whether prohibited conduct² has occurred and, if so, by imposing a remedy provided for in this Act;
- (b) grant an order of costs in terms of section 147; and
- (c) Exercise any other power conferred on it by law."

BACKGROUND

10. On 26 February 2015, the Applicant initiated the complaint against the Respondent in terms of section 136(2) of the NCA.³This initiation was signed (approved) by the Chief Executive Officer on the same day the 26th February 2015.
11. From the founding Affidavit deposed by Boucher, the Applicant avers that the Applicant initiated a complaint as part of an investigation into the compliance of credit providers in the Bloemfontein area. The investigation, by Godfrey Tladi, revealed that the Respondent had contravened the Act by committing conduct prohibited by the Act.
12. The parties subsequently exchanged pleadings in the form of an answering affidavit from the Respondent and a reply from the Applicant. In its answering affidavit, the Respondent simply raised general denials of most allegations, while noting *"It is evident from the conflicting allegations contained in the affidavit and investigation report that this case can only be resolved by giving oral testimony before the Tribunal"*.
- 12.1 In its answering affidavit, the Respondent simply raised general denials to most allegations; and even accused the Applicant of improperly getting the search warrant from a Magistrate under false pretences.

² Section 1 of the Act defines prohibited conduct as "an act or omission in contravention of this Act, other than an act or omission that constitutes an offence under this Act by a credit provider.

³ Page 7 of case file

- 12.2 On its side, the Applicant's Replying Affidavit simply restated most of the things already dealt with in the Founding Affidavit. But, it also raised some points in limine on whether the Respondent's filing of its papers was in compliance with the Tribunal Rules.

THE LAW ON THE MATTER

13. Save for the few legal technicalities raised by the parties in their exchange of papers, the matter was ripe for a hearing on the 21st of July 2016.
14. Three Tribunal Members were ready to hear this matter, and had already applied their minds to all the relevant legislation applicable to it, including the appropriateness or otherwise of some of the Applicant's prayers and some of the Respondent's written submissions.

SETTLEMENT AGREEMENT

15. At the hearing of the 21st July 2016, the parties presented the Tribunal with a settlement agreement concluded out of court. The Tribunal examined the contents in chambers and concluded that the agreement met the requirements of bringing the content under the jurisdiction of the Tribunal. The parties had also agreed to apply to make the settlement agreement an order of the Tribunal, with leave of the Tribunal. This therefore, curtailed the matter from having to examine evidence and make a judgment on that basis.

ORDER

16. In the light of the abovementioned agreement and the conclusion by the Tribunal that the agreement meets the standard to locate its content within the jurisdiction of the Tribunal, it is hereby ordered that the settlement agreement between the parties dated 21 July 2016 (attached hereto and manually labelled "Annexure A"), is made an order of the Tribunal.


17. There is no order as to costs and none has been requested.

Thus done and handed down at Centurion this 21st Day of July 2016

Prof B. Dumisa
TRIBUNAL MEMBER & Deputy Chairperson

Authorised for issue by National Consumer Tribunal
Case Number: NCT-38604-2016-140(1)
Date: 01-08-2016

National Consumer Tribunal
Ground Floor, Building B
Lakefield Office Park
272 West Avenue, Centurion, 0157
www.thenct.co.za



national consumer tribunal

With Ms. P. Beck (Presiding Member) and Mr F Sibanda (Member) concurring

IN THE NATIONAL CONSUMER TRIBUNAL
HELD AT CENTURION

THE NATIONAL CREDIT REGULATOR

APPLICANT

KAGISO FINANSIELE DIENSTE CC	RESPONDENT
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SETTLEMENT AGREEMENT

1. The National Credit Regulator ("the applicant") has instituted proceedings in the National Consumer Tribunal held at Centurion against Kagiso Finance Dienst CC ("the respondent") under case number NCT38604/2016/14Q(1)B. NCA for an order from the Tribunal:-

3) **Declaring the Respondent to be in repeated contravention of the following Sections of the Act:**

i. Section 87(2)(b)(ii);

- ii. Section 81(2)(e)(iii);
- iii. Section 81 (3) read with Section 80 (1)(b)(i);
- iv. Section 170 read with Regulation 55(1)(b)(vi) of the Act;
- v. Section 81(a);
- vi. Section 100(1)(c) read with Regulation 44.
- b) Declaring the repeated contraventions referred to heretofore conduct which is prohibited in terms of section 150(a) of the Act;
- c) Injuncting the Respondent from future breaches of the Act;
- d) Directing The Respondent to refund consumers overcharged service fees which same being confirmed by an audit report;
- e) Imposing an administrative fine against the Respondent in the sum of R 1 000 000, 00 (one million South African Rand);
- f) Granting the Applicant such further and / or alternative relief as the Tribunal may consider appropriate to give effect to the consumers' rights in terms of the Act, per Section 150(j) of the Act.

B. NOW THE PARTIES AGREE AS FOLLOWS:

WHEREAS, the parties are now desirous of settling this matter,

NOW THEREFORE, the parties record the terms and conditions of settlement as follows:

1. The respondent agrees to, within 7 days of this settlement:-
 - a. Provide the Applicant with written confirmation that the Affordability Assessment Regulations have been implemented;
 - b. Provide the Applicant with written confirmation that they are complying to the National Credit Act in full;
 - c. Undertake to cease to include the initiation fee in the deferred amount and thereby cease to charge interest on the deferred initiation fee
2. Further to the above the Respondent will:
 - a. Refund the interest charged on the initiation fee included in the principal debt of the credit agreements sampled during the investigation by the Applicant.
 - b. Within 30 days of this Agreement using made an order by the National Consumer Tribunal, appoint an independent auditor, at its own cost.

i. The said independent auditor must determine and compile a list of all the consumers who were charged service fees that exceed the prescribed maximum amount;

ii. Once the aforesaid auditor has compiled the abovementioned list, the Respondent will refund the amount to each consumer within 30 days from the date of the auditor's report; and

iii. Once the refunds have been made, as stated above, to the consumers, the Respondent is to provide a written report to the Applicant detailing the identity of the consumers and the refunds made. This report is to be provided to the Applicant within 120 days of this agreement being made in order of this Tribunal.

3. The respondent will pay into the National Revenue Fund an administrative fine of R15,000.00 (Fifteen Thousand Rand).

4. This settlement will constitute final settlement between the parties of the pending litigation.


5. Each party to this agreement agrees to settle their own legal costs incurred in this matter and no further claims will be made in this regard.

6. The Applicant's rights remains reserved, pursuant to the conclusion of this agreement, to conduct pro-active investigations on the business of the Respondent, at any time in the future to ensure that credit is being extended in a manner that is compliant with the Act.

SIGNED at Accra on 21 July 2016.


Kagame Mwanishi Dierie CC
For and on behalf of the Respondent

SIGNED at Accra on 21 July 2016.


National Credit Regulator
For and on behalf of the Respondent