

SOUTH AFRICA / JUDGMENT

Heyns v Valotech CC Trading As Divorce Settlement Services CC and Another (NCT/338482/2024/75(1)(b) CPA) [2024] ZANCT 47 (17 October 2024) [2024] ZANCT 47

COURT

National Consumer Tribunal

BEFORE

C Sassman

CASE / FILE NUMBER

NCT/338482/2024/75(1)(b) CPA

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case Number: NCT/338482/2024/75(1)(b) CPA

In the matter between: JENNIFER ANNE HEYNS APPLICANT and VALOTECH CC TRADING AS
DIVORCE SETTLEMENT SERVICES CC FIRST RESPONDENT NATIONAL CONSUMER
COMMISSION SECOND RESPONDENT

Coram:

Adv C Sassman – Presiding Tribunal member

Date of consideration (in chambers) - 16 October 2024

Date of

ruling

- 17 October 2024

LEAVE TO REFER - RULING AND REASONS

THE PARTIES

1. The applicant is Jennifer Anne Heyns (the applicant), an adult female defined as a consumer in section 1 of the Consumer Protection Act 68 of 2008 (the CPA).

2. The first respondent is Valotech Trading as Divorce Settlement Services CC (the first respondent), a close corporation defined as a service provider in section 1 of the CPA.
3. The second respondent is the National Consumer Commission (NCC), a juristic person established in terms of section 85(1) of the CPA. The NCC is responsible for enforcing the CPA by monitoring the consumer market to ensure prohibited conduct and offences are prevented or detected and prosecuted.

TERMINOLOGY

4. A reference to a section in this ruling refers to a section of the CPA, unless indicated otherwise.
5. A reference to a rule in this ruling refers to the Rules of the Tribunal^[1] (the rules).

APPLICATION TYPE AND JURISDICTION

6. This is an opposed application in terms of Section 75(1)(b), which states that if the NCC issues a notice of non-referral in response to a complaint other than on the grounds contemplated in section 116, the complainant concerned may refer the matter directly to the Tribunal, with the leave of the Tribunal.
7. Section 75(5)(b) states that the Chairperson of the Tribunal may assign an application for leave as contemplated in section 75(1)(b) to be heard by a single member of the Tribunal, in accordance with section 31(1)(a) of the National Credit Act 34 of 2005 (NCA). Accordingly, the Tribunal has jurisdiction to hear this application .

FACTS AND PARTIES'

SUBMISSIONS

8. On 15 July 2022, the applicant divorced her husband. The couple was married out of community of property with the accrual system. The divorce order incorporated a settlement agreement regarding the division of their respective estates. In terms of the agreement, a liquidator, Rudolph Philippus Jordaan (the liquidator), the sole member of the first respondent, was appointed to calculate the net end value of the estates. The liquidator was further required to determine the quantum of one-half of the difference between the accruals of the respective estates.
9. The applicant alleges that the first respondent, through its liquidator, offered a substandard service and overcharged her for it, resulting in a financial loss of R234 896.40. The applicant submits that the first respondent took 41.2% of her divorce settlement and took thirteen months to finalise its calculations. She states that the first respondent's processes must be reviewed to ensure that other consumers are not subjected to the same treatment. The applicant is seeking an order for the first respondent to compensate her with R234 896.40 and for a review of its billing practices. She further seeks an order for the Tribunal to implement legislation that enforces a capped fee for accrual calculations and a further order

confirming that accrual calculations must be completed within six months.

10. The first respondent opposes the application and has raised two points in limine in its answering affidavit. In its first point in limine, the first respondent contends that the applicant should have applied to the High Court for a declaratory order confirming that the Tribunal has jurisdiction to hear this matter. This is so since the application is not listed in rule 3 of the Tribunal's rules. In its second point in limine, the first respondent contends that the court appointed Rudolph Philippus Jordaan as the liquidator and not the first respondent. As such, the applicant brought the incorrect party before the Tribunal. Accordingly, the first respondent submits that these points, in limine, respectively or combined, render the application fatally defective and it should be dismissed.
11. The first respondent maintains that the fees charged to clients align with the fixed tariff charged by executors in deceased estates. Accordingly, a fee equal to 3,5% of the value of the assets reflected in the asset account was charged. As agreed, the applicant and her husband each paid 50% of the fee. The first respondent further submits that the fee is calculated according to the value of the assets of the respective estates and maintains that it is impossible to provide a quotation before calculating the accrual, as no values are available yet.
12. The applicant lodged a complaint with the NCC for relief. On 21 June 2024, the NCC issued a notice of non-referral indicating that it would not pursue the matter, since the redress sought cannot be provided in terms of the CPA. Despite being included in the application as a second respondent, the NCC has not opposed the application.

LEAVE TO REFER HEARINGS

13. Previously, the Tribunal held formal hearings for leave to refer applications to the Tribunal, and all the parties would be present. In *Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd and Others*[2], the court provided helpful guidance to the Tribunal in decisions regarding leave to refer applications. It held that a formal hearing for leave to refer applications was unnecessary and that no test was to be applied. The court further held that the Tribunal's decision to grant the applicant leave to refer the matter could not be appealed.
14. The court held that the NCA provides for an expeditious, informal, and cost-effective complaints procedure and that section 141(1)(b) of the NCA confers on the Tribunal a wide, largely unfettered discretion to permit a direct referral. The purpose of the provision is simply for the Tribunal to consider the complaint afresh, with the benefit of any findings made by the Regulator, and to decide whether the complaint deserves the Tribunal's attention. Circumstances that may influence the Tribunal's decision may include the prospects of the applicant's success, the importance of the issue, the public interest to have a decision on the matter, the allocation of resources, the applicant's interest in the relief sought, and the fact that the Regulator found that the complaint lacked

sufficient merit to necessitate a hearing before the Tribunal. Although the court referred to section 141 of the NCA, the provisions of section 75 of the CPA are almost identical and can be interpreted similarly.

15. As no test is to be applied, the Tribunal will consider this matter in the general context of the circumstances submitted by the applicant.

CONSIDERATION

16. The first respondent contends that the applicant was required to approach a High Court for a declaratory order before applying to the Tribunal. In accordance with the notice of non-referral received from the NCC, the applicant was advised that she could approach the Tribunal for relief in terms of section 75(1)(b). She acted accordingly and had no reason to apply for a declaratory order. In terms of section 27(a)(i) and (ii) of the NCA, the Tribunal has jurisdiction to adjudicate this application. Therefore, this point in limine must fail.
17. The first respondent further contends that the applicant has brought the wrong party before the Tribunal since Rudolph Philippus Jordaan was appointed as the liquidator and not the first respondent. The Tribunal considered that both the provisional and final liquidation reports submitted to the applicant by the liquidator display the first respondent's name as a letterhead. The liquidator's consent to being appointed further states: "RUDOLPH PHILIPPUS JORDAAN of DIVORCE SETTLEMENT SERVICES".

Therefore, the Tribunal is persuaded that the liquidator trades under the first respondent's name and that the service offered to the applicant was offered under the first respondent's name. Accordingly, this point in limine must also fail.

18. While the Tribunal has the requisite jurisdiction to adjudicate the merits of the applicant's complaint regarding the service she received from the first respondent, it does not have the jurisdiction to grant the relief she seeks. The applicant's claim for compensation of R234 896.40 amounts to a claim for damages resulting from a contractual agreement, with the first respondent and her liability to pay for its services. The evidence before the Tribunal indicates that the first respondent fulfilled its obligations in terms of the settlement agreement but that the applicant is predominantly dissatisfied with the cost of the service. The Tribunal has no jurisdiction to award damages to the applicant in such an instance.
19. Furthermore, the Tribunal has no jurisdiction to implement legislation to, in general, place a threshold on the fee charged by service providers for accrual calculations or limit the period in which such calculations must be completed. As a result, the applicant's application has no reasonable prospect of success at a hearing and must be dismissed.

ORDER

20. Accordingly, the Tribunal makes the following order:

20.1 The application is dismissed; and

20.2 There is no cost order.

Adv C Sassman

Presiding Tribunal member

[1] Published under GN 789 in GG 30225 on 28 August 2007 as amended by GN 428 in GG 34405 on 29 June 2011, GN R203 in GG 38557 on 13 March 2015 and GN 157 in GG 39663 on 4 February 2016.

[2] (Case no 314/2020) [2021] ZASCA 91 (25 June 2021) SAFLII.

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