

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Kutuma Financial Services (NCT/16158/2014/140(1)NCA) [2016] ZANCT 5 (2 February 2016)

[2016] ZANCT 5

COURT

National Consumer Tribunal

BEFORE

B Dumisa, L May, P Beck

CASE / FILE NUMBER

NCT/16158/2014/141(1)NCA

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

number: NCT/16158/2014/141(1)

NCA

In

the matter between:

NATIONAL
CREDIT REGULATOR
APPLICANT
and
KUTAMA
FANANCIAL[FL1]
SERVICES
RESPONDENT

Coram: Dr
B Dumisa
–
Presiding
Member
X
May
– Member
P
Beck
– Member
Date
of Hearing
- 16
October 2015

JUDGMENT

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 was represented at the hearing by Ms Senyarelo.

RESPONDENT

3. The Respondent is Kutama Financial Services (hereinafter referred to as the Respondent). There was no appearance by the Respondent or a representative of the Respondent at the hearing.

APPLICATION TYPE

4. The Application in terms of Section 140[FL2] (1)(b) of the Act is for an order declaring that the Respondent is in repeated contraventions of specific sections of the Act, engaged in prohibited conduct and for an administrative fine.

SUMMARY OF THE APPLICANTS SUBMISSIONS

5. The Applicant’s Founding Affidavit is deposed to by Nthupang Magolego in her capacity as Manageress of the Investigation and

Enforcement Department of the Applicant.

6. On 30 April 2014, the Applicant initiated a complaint in its own name against the Respondent in terms of Section 136(2) of the Act.

7. The complaint was investigated on 30 April 2013 by Siphiwe Mashaba, who was duly authorised in terms of Section 25 of the Act to undertake such an investigation into the conduct and business practices of Kutama Financial Services in the consumer credit market. The investigation was conducted in the presence of the owner of the business, Lufuno Richard Makhwanya, (“ Makhwanya”), who was also interviewed.
8. At the time of the inspection, the Respondent was operating as a credit provider for approximately four (4) months but was not registered

with the Applicant as a credit provider. The respondent had not concluded 100 credit agreements or more; alternatively the sum of all the credit agreements concluded did not exceed R500 000,00 (five hundred thousand rand). The Respondent had however applied to be registered as a debt collector with the Applicant.

9. The investigation of the premises revealed that during the period when the Respondent was not registered, the Respondent conducted its business in a manner which contravened certain Sections and Regulations of the Act.

10. The Applicant alleges that the Respondent contravened the following sections of the Act:

10.1 The Respondent conducted inadequate affordability assessments prior to granting consumers loans in contravention of Section 81(2) of the Act; alternatively, no maintenance of records were kept in relation to those affordability assessments conducted in contravention of Section 170 read with Regulation 55(1)(b).

10.2 Certain terms and conditions that the Respondent imposes on consumers in relation to credit agreements are in contravention of Section 90(2) of the Act.

10.3 The Respondent failed to provide consumers with pre-agreement statements and quotations prior to the conclusion of small credit agreements with consumers in contravention of Section 92(1) read with Regulation 28(1).

10.4 The Respondent failed to use the prescribed format for its short term credit agreements as contemplated in Section 93(2) read with

Regulation 30(1);

10.5 The rate of interest levied by the Respondent on [FL3] small credit agreements concluded are in contravention of Section 100 (1)(c) and Section 101(1)(d)(ii) read with Regulation 42(1).

10.6 The retention by the Respondent of consumer instruments, such as bank cards with corresponding pin codes, social welfare cards (SASSA

cards) and identity documents to unlawfully enforce credit agreements against consumers in contravention of Section 133 read with Section 90(2)(l).

10.7 Providing false or misleading information in contravention of Section 139(4).

THE HEARING

11. There was no appearance by the Respondent or a representative at the hearing.
12. At the hearing the Applicant made the following submissions which are summarised below:-
 - 12.1 The Applicant highlighted the areas of contravention as set out in the founding affidavit.
 - 12.2 The Applicant addressed the Tribunal on the order sought for an administrative fine.
13. The Applicant prayed for the following orders to be granted:-
 - 13.1 Declaring the Respondent to be in repeated contravention of the following sections of the Act:
 - 13.1.1 Section 81(2);
 - 13.1.2 Section 91(a) read with Section 90(2)(b);
 - 13.1.3 Section 92(1) read with Regulation 28(1));
 - 13.1.4 Section 93(2) read with Regulation 30(1));
 - 13.1.5 Section 100 (1)(c) and 101(10(d)(ii) read with Regulation 42(1)
 - 13.1.6 Section 133 read with Section 90(2)(l);
 - 13.2 Declaring the repeated contraventions to be prohibited conduct in terms of Section 150(a) of the Act;
 - 13.3 Interdicting the Respondent from future breaches of the Act
 - 13.4 The imposition of an administrative fine of R25 000.00 (twenty five thousand Rand)
 - 13.5 That the Tribunal grant the Applicant such further and/or alternative relief as the Tribunal may consider appropriate to give effect to the consumer's rights in terms of the Act.

ISSUE TO BE DECIDED

The following must be decided by the Tribunal:

14. The Tribunal must consider whether the conduct of the Respondent constitutes prohibited conduct.
15. The Tribunal must further consider whether the contraventions of the Act warrant the relief sought by the Applicant.

CONSIDERATION OF THE EVIDENCE IN THE ABSENCE OF THE RESPONDENT

16. On 29 July 2014, the Applicant filed the application with the Tribunal. Subsequently a Notice of Complete Filing was issued by the Registrar on 31 July 2014 to both the Applicant and the Respondent. In terms of Rule 13 of the Rules of the Tribunal, the Respondent had to respond within 15 days by serving an answering affidavit on the Applicant. The Respondent however failed to do so.
17. Rule 13(5) provides as follows:

“Any fact or allegation in the application or referral not specifically denied or admitted in the answering affidavit, will be deemed to have been admitted”
18. Therefore, in the absence of any answering affidavit filed by the Respondent, the Applicant’s application and all of the allegations contained therein are deemed to be admitted.
19. Rule 24(1)(b) further provides that the Presiding member may continue with the proceedings in the absence of the Respondents if the Respondent fails to attend or be represented at the hearing.
20. Rule 24(2) states that the Presiding member must be satisfied that the Respondents were properly notified of the date, time and venue of the proceedings.
21. In this matter the Notice of set down issued by the Registrar to all the parties is before the Tribunal and the Presiding member is satisfied that all the parties were properly notified of the hearing.
22. The Tribunal therefore proceeded with the hearing of the matter.

CONSIDERATION[FL4] OF THE

FACTS

23. At the time of the investigation of the Respondent by the Applicant on 30 April 2013, the Respondent had only been in operation as a credit provider for approximately four (4) months. During this period the Respondent conducted business without being registered as a credit provider. Per Section 40 of the Act and at the time of the investigation, the Respondent was not required to be registered with the Applicant because the Respondent had not concluded 100 credit agreements or more; alternatively the sum of all credit agreements concluded did not exceed R500 000,00 (five hundred thousand) rand[FL5] .)
24. It should be noted however that the Respondent did apply to be registered as a debt collector.
25. In all the consumer files investigated prohibited conduct was perpetuated by the Respondent in a number of ways such as: no evidence was found of affordability assessments being conducted prior to the granting of consumer loans; no pre-agreement statements or quotations were found during the course of the investigation; no small

agreements were drafted by the Respondent; the prescribed forms that records small credit agreements were not found at the business premises of the Respondent; the loan application forms of the Respondent did not comply with the requirement of recording a small credit agreements; on the files investigated the Respondent, the Respondent was found to be in possession of identity documents, social security cards, bank cards and pin numbers of consumers; the Respondent charged interest at a rate of 30% per month on credit agreements which percentage exceeds the maximum permissible

amount of interest to be charged in terms of the Act. The loans granted were in the range of R500,00 (five hundred rand) per month.

26. As stated previously, the Respondent did not submit an answering affidavit and did not appear at the hearing. The evidence submitted

by the Applicant is therefore uncontested. The Tribunal accepts the evidence placed before it as proven on a balance of probabilities.

The Tribunal must then consider the application of the relevant law to these facts.

CONSIDERATION OF THE APPLICABLE LAW AND THE TRIBUNAL'S FINDINGS

Jurisdiction

27. Section 136(2) of the Act provides for the National Credit Regulator to initiate a complaint in its own name.

Section 140 of the Act relates to the outcome of a complaint received by the Regulator and details the process to be followed by the Regulator, should the Regulator be of the view that a person has engaged in prohibited conduct and that the matter should be referred to the Tribunal. The relevant portion states the following:

27.1. "(1) After completing an investigation into a complaint, the National Credit Regulator may –

- (a) make a referral in accordance with subsection (2), if the National Credit Regulator believes that a person has engaged in prohibited conduct;
- (b) make an application to the Tribunal if the complaint concerns a matter that the Tribunal may consider on application in terms of any provision of this Act.
- (c) In the circumstances contemplated in subsection (1)(b), the National Credit Regulator may refer the matter (b) to the Tribunal."

The Tribunal derives its jurisdiction to hear this matter based on the above sections in the Act.

Sections relating to registration and applicability of the Act

28. Section 40 of the Act states that " A person must apply to be registered as a credit provider if:

“that person, alone or in conjunction with any associated person, is the credit provider under at least 100 credit agreements, other than incidental credit agreements; or the total principal debt owed to that credit provider under all outstanding credit agreements, other than incidental credit agreements, exceeds the threshold prescribed in terms of Section 42(1).

29. Section 4 of the Act states the following:

“(1) Subject to sections 5 and 6, this Act applies to every credit agreement between parties dealing at arm’s length and made

within, or having an effect within, the Republic, except:-

29.1 a credit agreement in terms of which the consumer is-

- (a) a juristic person...
- (b) the state; or
- (c) an organ of state;

29.2 a large agreement is described in section 9(4)...

- (a) a credit agreement in terms of which the credit provider is the Reserve Bank of South Africa; or
- (b) a credit agreement in respect of which the credit provider is located outside the Republic, approved by the Minister on application by the consumer in the prescribed manner and form.

30. The Act further defines a credit provider as “in respect of a credit agreement to which this Act applies, means- ... “ the party who advances money or credit to another under any other credit agreement;..”

31. The Tribunal has considered the above mentioned sections and it is satisfied that whilst the Respondent was not registered during the entire period when loans were granted to consumers, however the Act is still applicable to the Respondent and as such the Respondent must comply with the relevant sections of the Act applicable to credit agreements. The Act makes specific reference to sections that Registrants must comply with under the Act, and in other sections, reference is made to credit providers. The Tribunal is therefore only considering those sections of the Act which the Respondent, as a credit provider (not as a Registrant), is required

to comply with.

Sections pertaining to documents to be provided to consumers and record keeping

32. Section 92(1) states that “A credit provider must not (own emphasis) enter into a small credit agreement unless the credit provider has given the consumer a pre-agreement statement and quotation in the prescribed form.” Read with Regulation 28 which provides the following:-

33. (1) The pre-agreement statement and quotation given to a consumer in terms of Section 92(1) of the Act must comply with the following

requirements:

33.1 The pre-agreement statement and quotation may be contained in one document or in two separate documents;

33.2 The pre-agreement statement and quotation must be in the format set out in Form 20;

33.3 For purposes of electronic or telephone originated pre-agreement statement and quotation for small agreements, the electromagnetic

recording and transcribing of documents will be sufficient, provided that the consumer is supplied with copies of the documents within a reasonable time.

(2) If any section of the pre-agreement statement and quotation as prescribed in this section does not apply to the particular type of credit agreement, such section may be omitted from the statement.

(3) If any category of fee or charge that is provided for is not levied by the credit provider, or if no security, insurance or similar requirements are made by the credit provider, the sections dealing with such matters may be omitted.

(4) The following definitions will apply to Form 20, in respect of credit facilities that meet the criteria for small agreements...”

34. Section 170 of the Act relates to the keeping of records by the credit provider. This section states: “A credit provider must (own emphasis) maintain records of all applications for credit, credit agreements and credit accounts in the prescribed manner and form and for the prescribed time.” Section 93(2) states: “A document that records a small credit agreement must (own emphasis) be in the prescribed form”. This section must be read with Regulation 30, which states that:

“30 (1) A document that records a small credit agreement must (own emphasis) contain all the information as reflected in Form 20.2

(2) The information listed in Form 20.2 may be disclosed in the order of choice of the credit provider.”

35. It is clear from the evidence put forward by the Applicant that the Respondent failed to comply with the requirements of ensuring that the consumers were provided with pre-agreements and quotations. Further, the Applicant has shown that the information the Respondent kept of a loan application form does not meet the requirements of the Act.

Sections relating to unlawful provisions of credit agreements

36. Section 90(2)(k)(iii) states:-

“A provision of a credit agreement is unlawful if it expresses, on behalf of a consumer an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed.”

The following two clauses in the contract are deemed to be repressive:

- (a) “my ID and bank card will be kept by KFS personnel until paid off the loan”; (Clause 1.2 thereof)
 - (b) “No third party will be allowed to intervene between these deals except KFS personnel staff.” (Clause 1, 4 thereof.)
37. The effect of clause 1.2 is that it deprives the consumer of the right to use their “personal instruments” and aids the credit provider to use such instrument as security for the debt. This conduct is deemed an offence in terms of Section 133 of the Act and such retention as a means of security is contrary to the intention of the Act, more specifically Section 3(e)(iii). Section 1.4 of the contract endeavours to deprive the consumer of the protection of the Act under Sections 83, 86, 134 and 136 and the inclusion of such a clause is in contravention of Section 90(2)(b). It further aims to avoid the credit providers obligations to follow lawful debt enforcement procedures detailed in Section 129 and 130 of the Act.

By the inclusion of such provisions in a credit agreement, the Respondent is in contravention of Section 90(1), 90(2)(b) and 90(2)(l) of the Act.

Sections relating to affordability assessments:

38. Section 81 of the Act states that:

“(1)

- (2) A credit provider must not (own emphasis) enter into a credit agreement without first taking reasonable steps to assess-
 - (a) The proposed consumer’s-
 - (i) General understanding and appreciation of the risks and costs of the proposed credit, and of the rights and obligations of a consumer under a credit agreement;
 - (ii) Debt re-payment history as a consumer under credit agreements;

- (iii) Existing financial means, prospects and obligations; and
- (c) Whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement.
- (3) A credit provider must not enter into a reckless credit agreement with a prospective consumer.
- (4) For all purposes of this Act, it is a defence to an allegation that a credit agreement is reckless if-
 - (a) the credit provider establishes that the consumer failed to truthfully answer any requests for information made by credit provider as part of the assessment required by this section; and
 - (c) a court or the Tribunal determines that the consumer's failure to do so materially affected the ability of the credit provider to make a proper assessment."
- 39. Regulation 55(1)(b)(vi) further supports the requirement of conducting the pre-assessment as well as retaining the required supporting

documentation as it states that "In addition to any records that must be kept in terms of the Act, a registrant must (own emphasis) maintain the following records

relating to its registration activities, which records may be kept in electronic format: (b) Credit Providers, in respect of each consumer: documentation in support of steps taken in terms of Section 81(2) of the Act."

- 40. The Applicant's evidence in this regard is that there were no assessment forms completed by consumers, but rather that the

Respondent granted loans on the basis of considering the information on a consumers' payslip. In the absence of any formal assessments being found during the investigation, the conclusion reached by the Tribunal is that the Respondent has not complied with the sections relating to affordability assessments.

- 41. The Applicant's investigation revealed that there were no records on the files that met the requirements of Regulation 55. Thus the Respondent has not met the requirement to keep proper records as required by the Act, in conducting pre-assessments. Therefore, one of the main conclusions that can be drawn from the conduct of the Respondent is that the Respondent was conducting reckless credit granting and that consumers were being deprived of their rights in terms of the Act.

Excessive interest rates

- 42. Section 100(1)(c) of the Act states :

"A credit provider must not (own emphasis) charge an amount to, or impose a monetary liability on, the consumer in respect of an

interest charge under a credit agreement exceeding the amount that may be charged consistent with this Act.”

43. Section 101(a) of the Act states:

“A credit agreement must not (own emphasis) require payment by the consumer or any money or other consideration, except the principal

debt, being the amount deferred in terms of the agreement, plus the value of any item contemplated in section 102;”

44. Section 101(1)(d) of the Act further states that “A credit agreement must not (own emphasis) require payment by the consumer of any money or other consideration, except interest, which must be expressed in percentage terms as an annual interest rate calculated in the prescribed manner; and...”

45. The amount of interest levied by the Respondent on credit agreements exceeded the maximum limits permissible by the Act. The investigation

report shows that consumers were levied interest of 30% (thirty percent) on credit agreements per month which far exceeds the legal

limit of 5% per month on a short term loan. The maximum loan amount granted to consumers is R500.00 re-payable within a month.

Retention of bank cards, pin numbers and identity documents and social security cards

46. Retention of bank cards, pin numbers, identity documents and social security cards of consumers is in contravention of Section 133 read with Section 90(2)(l) of the Act.

47. The investigation report states that when a physical inspection was conducted on the business premises of the Respondent 13 bank cards, 9 pension cards (SASSA cards) and 22 Identity documents were found on the premises. A criminal case was opened by the Applicant at the Thohoyandou SAPS on 30 April 2013 with reference number CAS648/4/2013.

48. Accordingly the Tribunal finds that the Respondent is in contravention of Section 90(1), 90(2) (b) and 90(2)(l) of the Act.

Prohibited conduct

49. 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”. In such instances where a determination has been made by the Tribunal on prohibited conduct, Section 164(3) and (4) is applicable to the affected consumers. Section 164(3) states:

“A person who has suffered loss or damage as a result of prohibited conduct or dereliction of required conduct-

- (a) may not commence an action in a civil court for the assessment of the amount or awarding of damages if that person has consented to an award of damages in a consent order; or
 - (b) if entitled to commence an action referred to in paragraph (a), when instituting proceedings, must file with the registrar or clerk of the court a notice from the Chairperson of the Tribunal in the prescribed form-
 - (i) certifying that the conduct constituting the basis for the action has been found to be a prohibited or required conduct in terms of this Act;
 - (ii) stating the date of the Tribunal's finding; and
 - (iii) setting out the relevant section of this Act in terms of which the Tribunal made its finding.
 - (4) A certificate referred to in subsection (3)(b) is conclusive proof of its contents and is binding on a civil court.”
50. Based on the evidence before the Tribunal the Tribunal concludes that the Respondent has contravened various sections of the Act as well as the Regulations

CONSIDERATION OF THE ADMINISTRATIVE FINE

51. The Applicant made submissions to the Tribunal at the hearing arguing for the imposition of an administrative fine of R25 000,00 (twenty five thousand rand) in terms of Section 151 of the Act, alternatively in terms of Section 150(i) any other appropriate order to give effect to the consumers rights under the Act. It is the submission of the Applicant that the Tribunal considers the following:

51.1 That the consumers were vulnerable consumers some of whom being recipients of government grants;

51.2 That the consumers were “at risk” consumers and could not appreciate the cost of credit which was never disclosed to the consumers;

51.3 That the retention of bank cards, pin numbers, social security cards and identity documents of consumers made consumers more vulnerable and that such conduct was in contravention of the Act;

51.4 The conduct of the Respondent was in conflict with the purpose of the Section 3 of the Act to address over indebtedness;

51.5 That the Respondent conducted the business of a credit provider whilst being unregistered and even if the Respondent is not required to be registered the conduct displayed by the Respondent is exploitative;

51.6 That the Applicant had great difficulty in quantifying the loss or damages suffered by consumers because there was no information of the amounts advanced to consumers or the amounts withdrawn from consumers accounts;

51.7 There were no financials available to assess the profit derived of the Respondent;

51.8 The case as a whole and the conduct of the Respondent only presents aggravating factors and no mitigatory factors;

51.9 The Tribunal is referred to the Tribunal to the Tribunal judgments Louwen matter, Rufus Afonso and the Cash Convertors (citation to be added.)

RESPONDENTS

SUBMISSIONS

52. The Respondent was absent from the hearing and thus there are no submissions of the Respondent to consider.

ANALYSIS

OF THE LAW

53. The Tribunal's power to impose an administrative fine is derived from section 151 of the Act. Section 151(1) of the Act provides as follows –

“The Tribunal may impose an administrative fine in respect of prohibited or required conduct in terms of this Act or the Consumer Protection Act, 2008.”

Section 151(2) of the Act provides as follows –

“An administrative fine imposed in terms of the Act may not exceed the greater of-

- (a) 10 per cent of the respondent's annual turnover during the preceding financial year ;or
- (b) R1 000 000”.

54. Section 151 of the Act does not provide guidance on where the Tribunal should start in making a determination of the amount nor on the weight to ascribe to each of the factors listed. It does however clearly mandate the Tribunal to consider the factors as laid down in the Act and to set an upper cap on the administrative fine that may not be exceeded. When determining an amount, the Tribunal must consider the legislation from which it derives its own mandate and consider the factors in Section 151(3) of the Act which provides as follows:

“(a) The nature, duration, gravity and extent of the contravention;

- (b) Any loss or damage suffered as a result of the contravention
- (c) The behaviour of the respondent;
- (d) The market circumstances in which the contravention took place;
- (e) The level of profit derived from a contravention

(f) The degree to which the respondent has co-operated with the National Credit Regulator, or the National Consumer Commission, in the case of a matter arising in terms of the Consumer Protection Act, 2008 and the Tribunal; and

(g) Whether the respondent has previously been found in contravention of the Act, or the Consumer Protection Act 2008, as the case may be.

55. In the Werlan-case, the Tribunal stated that the Tribunal must consider fairness towards both the Applicant and the Respondent when

considering what would be a just administrative fine to impose. The Tribunal will also consider any mitigating factors that can be taken into account in arriving at the final amount of the penalty as well as the evidence before the Tribunal of the Respondent's annual turnover. This would be the Tribunal's point of departure and then to apply the factors in section 151(3) of the Act to same.

56. We now turn to whether the Tribunal may impose an administrative fine in this particular matter and in so doing also to section 2 of the Act which requires the Tribunal to interpret the Act in a manner that "gives effect to the purposes set out in section 3." Section 3 of the Act summarised is to promote and advance the social and economic welfare of South Africans, to promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market.

The nature, duration, gravity and extent of the contravention

57. From the evidence placed before the Tribunal it is clear that the contraventions of the Act are of a serious nature, namely having

consumers sign credit agreements containing unlawful clauses prior to being in default, the holding of PINS, bank cards, social security cards and identity documents. The period of time over which the transgressions took place is approximately four months but even in such a short period the contraventions amount to reckless credit granting. The Respondent is aware that it conducts a regulated activity and the gravity of the Respondents conduct illustrates the disregard for the legislation thereof. The Respondent did not attend the hearing and thus by the Respondents silence the Respondent admitted to engaging in such prohibited conduct.

Any loss or damage suffered as a result of the contraventions

58. No evidence was placed before the Tribunal on quantifiable loss or damage suffered as a result of the contraventions of the Respondent

save for the Applicant to say that consumers are prejudiced because of the overcharging of interest rates but not to a quantifiable

measure. The transgression that is apparent is the gross overcharging of interest at thirty percent (30%) per month. The Respondent and the Applicant failed to assist the Tribunal to quantify any loss to consumers. However the charging of excessive interest on its own demonstrates that consumers have suffered financial loss by paying an unlawful amount of interest on credit agreements.

The behaviour of the Respondent

59. The Tribunal noted that the Respondent did not attend the hearing. This is an aggravating factor.

The market circumstances in which the contravention took place

60. The Applicant made submissions of the vulnerability of consumers and the exploitation of consumers. These submissions were based on the location of the business premises of the Respondent and the fact that some consumers were the recipients of government grants but the Respondent was not able to substantiate these allegations further nor to place additional evidence thereof before the Tribunal beyond these assertions.

Level of profit derived from the contraventions

61. The extent of the loss suffered by individual consumers is not known by the Tribunal because the Respondent failed to attend the hearing to provide such key information to the Tribunal and the Applicant was during the course of the investigation unable to confirm such information with certainty related to all the credit agreements granted. The Respondent submitted that of the 10 credit agreements sampled a profit of R2 025,00 (two thousand and twenty five Rand) in interest was overcharged which the Applicant submits is a substantial amount in respect of just 10 consumers. The Tribunal views the overcharging of interest as well as a profit derived from exploitative practices as an aggravating factor.

The degree to which the respondent has co-operated with the National Credit Regulator and The Tribunal

62. It was submitted by the Applicant that the Respondent has ceased operating directly after the investigation by the Applicant and due to the non-attendance of the hearing by the Respondent of the hearing, the Respondent failed to take the Tribunal into its

confidence. The staff of the Respondent co-operated with the Applicants inspector.

Whether the respondent has previously been found in contravention of the act

63. Other than the Respondent being found by this Tribunal to be in contravention of the Act and the Regulations there is no further

evidence of any additional contraventions committed by the Respondent before the Tribunal nor evidence of prior investigations or enforcement actions pending against the Respondent.

CONCLUSION

64. In the light of the above factors taken into account by the Tribunal it is the view of the Tribunal that all of the factors operated in aggravation of the Respondents conduct. There is no doubt that the imposition of an administrative fine is appropriate in the

circumstances having regard to the evidence led. However, it is also appropriate that the Tribunal applies a rational approach to the imposition of an administrative linking such thinking to any evidence in mitigation, to the conduct of the Respondent, the fact that the Respondent has ceased operating, the impact on consumers and the annual turnover of the Respondent.

65. It is for these reasons, considering the matter as a whole and the conduct of the Respondent that the Tribunal views the imposition of an administrative fine of R25 000,00 (twenty five thousand rand) appropriate to reflect the seriousness with which the Tribunal views this type of prohibited conduct and flagrant disregard for consumers rights and the Act by the Respondent.

ORDER[FL6]

66. In the result the Tribunal makes the following order:

66.1 The Respondent must pay an administrative fine of R25 000,00 (twenty five thousand Rand) by no later than April 2016;

66.2 The Respondent is declared to be in repeated contravention of sections 81(2); 91(a) read with Section 90(2)(b), Section 92(1) read with Regulation 28(1), Section 93(2) read with Regulation 30(1), Section 101(1)(d)(ii) read with Regulation 42(1) and 133(1) read with Section 90(2)(l) of the Act;

66.3 The Respondents conduct is declared to be prohibited conduct in terms of Section 150(a) of the Act;

66.4 No order as to costs is made.

DATED THIS 2nd DAY OF FEBRUARY 2016

P A BECK

PRESIDING MEMBER

Dr B Dumisa (Member) and Mr L May (Member) concurring.

[FL1]Incorrect spelling

[FL2]Incorrect section

[FL3]spacing

[FL4]Heading should be on next page

[FL5]Extra bracket

[FL6]Heading should be on next page

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANCT/2016/5.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/national-credit-regulator-v-kutuma-unknown-topic-anct-2016>

Prepared on 10 October 2026 · Esheria