

SOUTH AFRICA / JUDGMENT

National Credit Regulator v L.A Van Rooten Finansiële Dienste BK t/a Abafana Finance-Benoni (NCT/39808/2016/140(1)) [2016] ZANCT 29 (21 July 2016)

[2016] ZANCT 29

COURT

National Consumer Tribunal

BEFORE

J. Maseko, H. Devraj, P. Beck

CASE / FILE NUMBER

NCT/39808/2016/140(1)

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/39808/2016/140(1)
DATE:	21 JULY 2016 In
the matter between:	NATIONAL CREDIT REGULATORAPPLICANT And L.A. VAN ROOYEN FINANSIELE DIENSTE BK t/a ABAFANA FINANCE – BENONI RESPONDENT
Coram:	Prof. J. Maseko – Presiding Member Ms. H. Devraj– Tribunal Member Ms. P. Beck– Tribunal Member Date of Hearing: 21 July 2016

JUDGMENT**AND REASONS****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 is deposed to by Jacqueline Boucher (“Boucher”), in the capacity of Manager of Investigations and Enforcement unit of the Applicant.

THE RESPONDENT

3. The Respondent is L.A. Van Rooyen Finansiële Dienste Bk T/A Abafana Finance - Benoni, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with registration number 2000/014910/23,

and is also a registered credit provider with the NCR with registration number NCRCP2684[1] “the Respondent.”

4. The Respondent has its place of business at 86 Princess Avenue in Benoni, Gauteng Province.
5. The Respondent’s answering affidavit dated 14 April 2016; was deposed to by Mr. Louis Jacobus van der Merwe, who is the Chief Operating Officer and Risk 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 1 of case file); signed by Jacqueline Boucher, a Manager: Investigations and Enforcement of the Applicant, on 1 March 2016.
7. According to referral to the Tribunal by Boucher dated 1 March 2016; the issues to be decided in this case, is, therefore:

7.1 Whether the Respondent contravened section 80(1)(a) of the NCA;

7.2 Whether the Respondent contravened section 81(2) of the NCA;

7.3 Whether the Respondent contravened section 81(3) of the NCA;

7.4 Whether the Respondent contravened section 90(2)(k)(iii) of the NCA;

7.5 Whether the Respondent contravened section 91(a) of the NCA;

- 7.6 Whether the Respondent contravened section 92(1) of the NCA;
- 7.7 Whether the Respondent contravened section 100(1)(a) of the NCA;
- 7.8 Whether the Respondent contravened section 101(1) of the NCA;
- 7.9 Whether the Respondent contravened section 170 of the NCA;
- 7.10 Whether the Respondent contravened Regulation 28(1)(b) of the NCA;
- 7.11 Whether the Respondent contravened Regulation 32 of the NCA;
- 7.12 Whether the Respondent contravened Regulation 43(3) of the NCA; and
- 7.13 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 compelling the Respondent to refund all past and present consumers any amounts it received in the form of fees, which it was not entitled to receive or which exceeded the prescribed maximum amounts allowed by the Act.
 - 8.4 An order imposing an administrative fine against the Respondent of R1million or 10% of the annual turnover of the Respondent.
 - 8.5 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 conduct^[2] 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 23 June 2014, the Applicant initiated the complaint against the Respondent in terms of section 136(2) of the NCA.[3] This initiation was signed (approved) by the Chief Executive Officer on the 24th June 2016.
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 Gauteng area. She further averred that this was after a monitoring exercise had revealed possible non-compliance. 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. And in the answering affidavit, the Respondent had also raised a point in limine. While a point in limine, commands priority as it can potentially end a matter before it proceeds, if upheld, the Respondent abandoned it. This abandonment is implied and apparent from its non-mention in a settlement agreement later concluded by the parties on the date of the hearing. It will, therefore, not receive any further attention or mention in this judgment.

THE LAW ON THE MATTER

13. Section 151(3) of the NCA indicating that it provides that:-

“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”

SETTLEMENT AGREEMENT

14. 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

15. 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.

16. 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. J. M. Maseko

TRIBUNAL MEMBER

With Ms. Penelope Beck (Tribunal Member) and Ms. Hazel Devraj (Tribunal Member) concurring

[1] Since 30 July 2007

[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 19 of case file

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/2016/29.html>

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

Prepared on 10 October 2026 · Esheria