

SOUTH AFRICA / JUDGMENT

## World Focus Group 912 (Pty) Ltd v National Consumer Commission (NCT/168800/2020/114(1)) [2020] ZANCT 11 (19 October 2020) [2020] ZANCT 11

COURT

National Consumer Tribunal

BEFORE

T Woker, L Best, A Potwana

CASE / FILE NUMBER

NCT/168800/2020/114(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD AT CENTURION

Case number: NCT/168800/2020/114(1)

In the matter between:

WORLD FOCUS GROUP 912 (PTY) LTD APPLICANT

and

THE NATIONAL CONSUMER COMMISSION RESPONDENT

Coram:

Prof T Woker Presiding Tribunal Member

Dr L Best

Tribunal Member

Mr A Potwana Tribunal Member

Date of hearing: 16 October 2020

Date of judgment: 19 October 2020

JUDGMENT AND REASONS

APPLICANT

1. The Applicant is World Focus Group 912 (Pty) Ltd a company registered in accordance with the company law of South Africa with registration No. 2014/278256/07 (herein after referred to as “the Applicant”).
2. Ms Mkhwanazi from DMI Attorneys represented the Applicant at the hearing.

#### RESPONDENT

3. The Respondent is the National Consumer Commission (“NCC” or “the Respondent”) established in terms of section 85 of the Consumer Protection Act 68 of 2008 (“the Act” or “the CPA”).
4. The Respondent was represented by Mr Selolo, the NCC company secretary, at the hearing.

#### APPLICATION TYPE AND THE RELIEF SOUGHT

5. This is an application for interim relief in terms of section 114 of the Act whereby the Applicant applies for an interim order in the following terms:

*“The release of the balance of the goods in container number TGBU6939223 which are not subject to the compliance notice issued by the NCC”.*

6. The Applicant indicates that it has applied for interim relief because serious irreparable damage may result to the Applicant as there will be ‘further financial loss to the business, disruption of business relationships with (their) clients, harm to the reputation of the business and possible future prospective clients’.
7. A hearing was held on 16 October 2020 via zoom electronic meeting platform, at which the parties made submissions.

#### BACKGROUND

##### IN BRIEF

8. In order to provide the context for the consideration of the application for interim relief, a brief background of the matter is detailed herewith, without venturing into the merits of the main application regarding the compliance notice and related dispute.
9. The NCC received a Detention Notice (dated 16 March 2020) as well as other documents from the Customs division of the South African Revenue Services (SARS) indicating that a consignment of goods (consignment number TGBU6939223), imported by the Applicant into South Africa was detained by SARS in terms of section 113(8) (a) of the Customs and Excise Act No 91 of 1964 on 16 March 2020. The consignment included 243 cartons of hats, wallets and bags. SARS indicated that the reason for the detention of the consignment was because the goods do not comply with the labelling requirements of Regulation 6 as published in Government Gazette Number 293 of 1 April 2011 (the regulations) published in terms of section 120 (1) of the Act. Specifically, labelling appears to be incomplete and only symbols are reflected.

10. The Detention Notice states that the consignment would remain under Customs control until authorisation was received from the NCC for the release thereof.
11. On 23 March 2020 two inspectors from the NCC proceeded to inspect the goods and on 14 May 2020 the Respondent issued a compliance notice to the Applicant in accordance with section 100 (1) of the Act because it was of the view that a significant portion of the goods in the consignment did not comply with certain sections of the Act.
12. In terms of the compliance notice, the Applicant was ordered to either return these goods to their country of origin or to destroy the goods.
13. In the main matter, the Applicant has applied to the Tribunal for this compliance notice to be reviewed and for part of this compliance notice to be set aside.
14. The Respondent alleges that the Applicant does not have locus standi to bring this application because it is not a complainant as envisaged by the Act.

## ANALYSIS

### OF THE FACTS AND THE LAW

15. Whether parties in a matter before the National Consumer Tribunal (the Tribunal) raised the issue of jurisdiction or not, it remains the responsibility of the Tribunal to mero motu ensure that it only entertains matters for which jurisdiction had been assigned in the appropriate legislation, in this particular case the CPA.
16. Jurisdiction to adjudicate on an application for interim relief will be apparent if the requirements for interim relief as laid down in Section 114(1) of the Act are found to exist.
17. In addition to its other powers in terms of the Act, section 114 gives the Tribunal the power to grant interim relief in terms of the Act.
18. Section 114(1) of the Act provides that:

*“a person who has applied for relief to a court, or the complainant in a complaint that has been referred to the Tribunal (emphasis added), may apply to a court subject to its rules, or to the Tribunal, as the case may be, for an interim order in respect of that application or complaint, and the court or Tribunal may grant such an order if—*

  - (a) there is evidence that the allegations may be true;
  - (b) an interim order is reasonably necessary to –
    - (i) prevent serious, irreparable damage to that person; or
    - (ii) to prevent the purposes of this Act being frustrated;
  - (c) the Respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and

(d) the balance of convenience favours the granting of the order”.

19. Section 1 of the Act states that:

*“a complainant means (a) a person who has filed a complaint with the Commission in terms of section 71; ...”*

20. Section 71 (1) of the Act states that

*“Any person (emphasis added) may file a complaint concerning a matter contemplated in section 69(c) (iv) with the Commission in the prescribed manner and form, alleging that a person has acted in a manner inconsistent with this Act”.*

21. The Applicant has not filed a complaint to a court and is not a complainant in a complaint that has been referred to the Tribunal and therefore does not meet the requirements of section 114(1) of the Act to apply for interim relief. Consequently, the Applicant does not have the requisite locus standi to make the application for interim relief and the application must fail.

#### FURTHER CONSIDERATIONS

22. Whilst having found that the Applicant does not have the requisite locus standi to make the application for interim relief, the Tribunal believes it would be failing in its duty if it did not ventilate regarding the approach adopted by the NCC regarding the continued holding of the entire consignment of goods in container number TGBU6939223.
23. The Compliance Notice only specifies goods bearing certain styling codes that the NCC inspectors believe do not comply with sections of the Act. At the hearing, the Applicant indicated that these goods comprise only a portion of the goods inside container number TGBU6939223. The remainder of the goods in this container are not subject to the Compliance Notice. The Applicant, therefore, submitted that these undisputed goods be released in order that it is able to continue its business and meet its contractual obligations to suppliers to supply these goods.
24. The Applicant had requested that SARS release these goods. SARS maintains that as per the Detention Notice issued on 16 March 2020, the entire consignment would remain under Customs control until authorisation is received from the NCC for the release thereof.
25. The NCC at the hearing confirmed its determination that it will authorise full release of the container upon the Applicant's compliance with the Compliance Notice, such that the goods which offend are removed.

26. The Tribunal is constrained jurisdictionally to rule on the balance of goods in the container, since these are not subject to the Compliance Notice. The Tribunal, does not see the difficulty of the NCC informing SARS to release the balance of goods to allow the Applicant to be able to continue trading and to meet its obligations to its suppliers and insodoing availing goods to consumers in the market wishing to purchase these goods, and in turn positively contribute to its business sustainability.

## CONCLUSION

27. The Tribunal does not have jurisdiction as the Applicant is not a complainant under the Act and the application for interim relief consequently fails.
28. Nothing precludes the Applicant from pursuing relief in the appropriate legal forum.
29. The Tribunal proceeds to consider an appropriate order.

## ORDER

30. Accordingly, the Tribunal makes the following order:
- 30.1. The Applicant's application for interim relief in terms of section 114 is dismissed.
- 30.2. There is no order as to costs.

Dated in Centurion on this 19th day of October 2020

[signed]

Dr L Best

Tribunal Member

With Mr A Potwana (Tribunal member) Prof T Woker (Tribunal member) and concurring.

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