



27 October 2015

To: Ms A Burger

From: Ms Mokgadi Mohlala

RE: HEARING REPORT NCT/26448/2015/149

SARAH MAVIS GATYENI/ FNB

| | |
|--|---|
| Date of Hearing | 20 October 2015 |
| Date on which the matter was postponed to | N/A |
| Previous hearing dates | N/A |
| Venue for hearing | NCT hearing room, Centurion |
| Number of matters heard | 1 of 1 |
| Case Number | NCT/26448/2015/149 |
| Panel Members | Presiding Member – Prof J Maseko Member 1 – Mr X May Member 2 – Adv F Manamela |
| Outcome of the case | A written, reasoned judgment will be issued in due course. |
| Date on which judgment is to be handed down | In due course |
| Issues to be decided | The Applicant is applying in terms of section 49(1) of the Act, for an interim order in respect of a complaint. The following issues must be considered by the Tribunal: <ol style="list-style-type: none"> 1. Whether the Tribunal has jurisdiction to hear a matter that is pending in the High Court. 2. Prescription 3. The issue of Costs |

Brief Synopsis of Facts and Issues

Points in limine Raised by the Respondent:

Jurisdiction:

1. The Respondent submits that there is litigation pending in the High Court dealing with the foreclosure property of the Applicant and her deceased spouse estate whom she divorced.

The Respondent submits that the Tribunal cannot interfere with high court proceedings.

The Respondent submits that the Tribunal is a creature of statute.

The respondent submits that there is no proper complaint as far as section 150 is concerned.

The Respondent further submits that there is no prohibited conduct as far as section 150 is concerned.

The Applicant submits that the Tribunal does have the power to hear the matter because it functions as a court.

Prescription:

1. The Respondent submits that section 166 of the NCA sets out the limitations of bringing an action.

The Respondent further submits that 3 years have lapsed therefore the Applicant is late in lodging her claim.

The Applicant submits that as far as prescription goes she did disturb it.

The Applicant submits that she disturbed prescription by engaging into the complaint with the ombudsman and the Respondent have possession of the letter from the Ombudsman.

| | |
|--|---|
| | <p><u>The issue of Costs</u></p> <p>The Respondent submits that costs can be awarded to them in terms of section 141 (1) of the NCA.</p> <p>The Respondent submits that the Applicant lodged a complaint with the NCR; the Human Rights Commission; The Presidency's office and all these entities advised the Applicant that she had no merits in this matter.</p> <p>The Respondent submits that the Applicant was warned that her case has no merits yet she persisted to in bringing the matter before the Tribunal.</p> <p>The Respondent submits that the Applicant continued with this matter on a vexatious basis.</p> <p>The Respondent further submits that there was no reason why the applicant put the Respondent out of pocket therefore the Applicant should bear the costs.</p> <p>The Respondent submits that the costs should be determined on the parameters of the counsel.</p> <p>The Applicant submits that she cannot afford bearing the costs.</p> |
| Analyst's view on the merits of the matter and substantiation thereof | |
| Recommendation on Facts and Issues | |
| Any additional research proposed | None |
| Trends or issues to be alerted to | None |
| Documents filed at the hearing | N/A |

Organisational issues to be alerted to

MS T SHADRACH

CASE ANALYST

ANEL BURGER

REGISTRAR