

IN THE NATIONAL CONSUMER TRIBUNAL

HELD AT CENTURION

CASE NO: NCT/12505/2014/75 (1)

In the matter between:

ESTHER RHULANI TSHWALE obo TRUE HARVEST COLLEGE

APPLICANT

And

FAIZAN PROPERTIES (PTY) LTD

RESPONDENT

CORAM:

Ms. D Terblanche - Presiding Member

Mr. X May - Member

Mrs. H Devraj - Member

Date of hearing: 23 January 2017

JUDGMENT AND REASONS

PARTIES

1. The Applicant is ESTHER RHULANI TSHWALE obo TRUE HARVEST COLLEGE (hereinafter referred to as the "Applicant"). The Applicant had periodic legal representation in this matter.
2. The Respondent is FAIZAN PROPERTIES (PTY) LTD (hereinafter referred to as the "Respondent"). The Respondent was represented throughout the proceedings by Counsel.

APPLICATION

3. The Applicant, in and during January 2014, filed the application in terms of Section 75(1)(b) of the Consumer Protection Act, Act 68 of 2008 (the "CPA") with the Tribunal. The filing was completed on 8 April 2014.
4. In terms of the application, the Applicant applied for leave by the Tribunal to grant it permission to refer a matter the National Consumer Commission (hereinafter the "NCC" or the "Commission") non-referred to the Tribunal directly for a hearing.
5. The application arose out of a dispute between the parties for the refund of rental paid by the Applicant to the Respondent in respect of premises Applicant rented from Respondent to operate its' college.
6. The Tribunal has, as is usual in applications of this nature, first considered whether to grant the Applicant leave to directly refer the matter.
7. The application for leave was considered on 13 August 2014. Leave was granted to the Applicant on 30 September 2014 to refer the main matter directly to the Tribunal for a hearing into it.
8. The decision to grant leave was appealed by the Respondent. A full panel of the Tribunal considered the appeal on 13 November 2015 and by way of majority judgment refused the appeal on 14 November 2015.

THE PROCEEDINGS TO DATE OF THE LAST HEARING

9. This matter has a long history. Suffices to start with the happenings subsequent to the Tribunal refusing the application to overturn the leave granted to Applicant to refer the main matter directly to the Tribunal for a hearing, namely -

9.1. A pre-hearing was convened and held and certain agreements reached and undertakings made;

9.2. The case subsequently set down for a hearing into the main matter on three (3) separate occasions.

10. At the pre-hearing held on 6 May 2016 a pre-hearing minute was agreed on by the parties and issued by the

Tribunal. That was done to expedite the finalisation of the main matter through the parties agreeing on the exchange of documentation and the procedural matters to be attended to in preparation of the hearing.

11. According to the pre-hearing minute above, the parties respectively agreed and undertook that the Applicant would deliver its' statement of claim, whereafter the Respondent would prepare and deliver its' Plea.

12. As at the date of this hearing on 23 January 2017, the Applicant had not filed its' statement of claim resulting in the Respondent not having been able to prepare and deliver its' Plea.

13. The hearing did not proceed on the latest two previously scheduled set-down dates for the following reasons -

13.1. On 13 September 2016 the Applicant applied for a postponement; and

13.2. On 17 October 2016 the Applicant yet again applied for a postponement of the hearing set down for 7 November 2016.

14. On 23 January 2017, the last of the series of set down dates, the Applicant did not appear for the hearing and did not communicate to the Respondent or the Tribunal explaining its' non-appearance.

SUBMISSIONS BY RESPONDENT

15. On appearing on 23 January 2017, the Respondent submitted that -

15.1. Quite a number of correspondences have been exchanged, with the Applicant's attorneys of record at the time and the Applicant regarding the Applicant's failure to deliver the statement of claim, as well as specific documentation requested in terms of Rule 35 (3) as agreed to in the pre-conference minute;

15.2. To date -

15.2.1. Numerous costs have been incurred by the Respondent who, each time when the case had been set down, had to prepare itself to present its case to the Tribunal on those occasions;

15.2.2. There has not been any delivery, or any documents, or statement of claim upon which

the matter is founded as per the agreement in the pre-trial, or the pre-hearing minutes, which was a filing document and agreed to by both parties at the time.

RELIEF SOUGHT AT THE HEARING

16. The Respondent requested of the Tribunal to exercise its discretion and dismiss the Applicant's claim in terms of the provisions of Rule 24 of the Tribunal Rules especially in view of the history of the matter and the continuous delays in the finalization of the matter occasioned by the Applicant.

DISCUSSION

17. Rule 24 of the Regulations re the National Consumer Tribunal's Rules provides for instances where a party fails to appear to attend or be represented at a hearing or any proceedings. Rule 24 (1) (a) provides that if the party "*... is the Applicant, the presiding member may dismiss the matter by issuing a written ruling ...*".

18. In the light of history in this matter namely -

18.1. The non-compliance by the Applicant with its pre-hearing commitments resulting in the Respondent not been placed in a position to plead to the Applicant's case;

18.2. Previous postponements in the matter at the instance of the Applicant;

18.3. The Applicant's non-appearance at the hearing scheduled and notified to the parties for 23 January 2017;

AND

18.4. Taking into consideration that the Tribunal is mandated in terms of section 142 of its founding legislation the National Credit Act, Act 34 of 2005, to conduct its hearings as expeditiously possible it is imperative that the finalisation of matters not be delayed.

ORDER

19. Accordingly -

19.1. Applicant's application be dismissed; and

19.2. No order is made as to costs.

Dated at Centurion this 14th day of February 2017.

[signed]

Ms D R Terblanche

Tribunal Member

Mr. May and Mrs. H Devraj concurring