

**IN THE NATIONAL CONSUMER TRIBUNAL  
HELD IN CENTURION**

Case number: **NCT/112239/2018/141(1)(b)**

In the matter between:

**ANNET LUDICK**

**APPLICANT**

and

**FIRST NATIONAL BANK, A DIVISION OF FIRSTRAND BANK LIMITED**

**RESPONDENT**

**Coram**

Mr A Potwana - Presiding Tribunal Member

Ms M Nkomo - Tribunal Member

Adv. F Manamela - Tribunal Member

Date of Hearing - 1 February 2019

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**JUDGEMENT AND REASONS**

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**THE PARTIES**

1. The Applicant in this matter is Annet Ludick, an adult female person. The Applicant is a consumer as defined in Section 1 of the National Credit Act 34 of 2005 (“the NCA”).

2. The Respondent is First National Bank; a division of FirstRand Bank Limited, a private company duly registered in accordance with the company laws of the Republic of South Africa (“FNB” or “the Respondent”). The Respondent is registered as a credit provider with the National Credit Regulator (“the NCR”) in terms of Section 12 of the NCA. At the hearing; the Respondent was represented by Mr Ten Napel; an attorney from CF Van Coller Incorporated Attorneys.

## TYPE OF APPLICATION

3. The application brought before the Tribunal is in terms of Section 141 (1) of the NCA. The Applicant filed the application after the NCR decided not to refer her complaint to the Tribunal and issued a Notice of Non-Referral. The Applicant has applied for leave from the Tribunal to self-refer the complaint to the Tribunal. In accordance with section 141 (1) of the NCA, only the application for leave to refer is being considered at this stage by the Tribunal.
4. This judgment follows a consideration of the documents filed of record as well as arguments presented by both parties at the hearing held in Centurion on 1 February 2019.

## BACKGROUND

### The Applicant’s case

5. On 26 July 2018; the Applicant served Form Tl.r30A together with NCR Form 32 on the Respondent; and filed the same with the Registrar of the Tribunal. Form Tl.r30A is a Filing Notice. NCR Form 32 is the prescribed form for referring complaints to the Tribunal (“Complaint Form”). A supporting affidavit was attached thereto. In “Part 2- The Complaint” of the Complaint Form, the Applicant alleges that the Respondent engaged in reckless lending. In “Part 3-Reasons, Relief and Leave Required” of the Complaint Form; the Applicant stated that she was not in agreement with affordability assessments done by the Respondent; as well as credit checks and outcome in 2 of the 4 accounts she had with the Respondent. The Applicant alleged that:

*“At the time the debt was incurred; I was over-indebted and I am currently over-indebted and cannot afford to make payments on these accounts without compromising my other obligations” (sic in toto). She wants “all the debt written off and to be reimbursed for payments made under debt review since date of claim in 2016.” (sic in toto).*

6. In her supporting affidavit; the Applicant stated that the complaint is in connection with Overdraft Account Number: [62068624686;\[...\]](#) Revolving Loan Account Number [4000063091251\[...\]](#), FNB

Credit Card Account Number: [4000060151253\[...\]](#), and Discovery Credit Card Account Number: [4000060151474\[...\]](#).

7. Essentially; the Applicant alleged that on or about 30 March 2015; she phoned FNB and enquired about an increase on her credit card limit. She received a quote via email. No further information was requested. She immediately signed and returned the quotation. The increase was approved. It appears from a document titled "*FNB Credit Card Limit Increase*" that the limit was increased to R61 000.00.
8. On 7 May 2015; the Applicant requested a revolving loan of R10 000.00. She received a quotation and the loan was granted without any requests for further information by FNB.
9. On or about 6 October 2015; the Applicant requested that her overdraft be increased. The overdraft limit was increased to R68 000.00 without any requests for further information.
10. On or about 7 December 2015; the Applicant requested another increase on her overdraft limit. She attached three payslips (September-November 2015) to the quotation and her overdraft limit was increased to R80 000. 00.
11. On or about 11 March 2016; the Applicant fell into financial difficulties due to over indebtedness; and struggled to pay her accounts. She approached Zero Debt and began a process of debt review. On or about 23 September 2016; with the Applicant's permission; Zero Debt filed a complaint of reckless lending against FNB with the NCR. FNB denied the allegations. On or about 6 December 2017; the NCR advised her that her file was closed prematurely. But; due to certain discrepancies that had been found regarding her affordability assessment; the file had been opened again. On or about 12 December 2017; she received confirmation from the NCR's Legal Department that her file had been re-opened. On 31 December 2016; the Applicant was retrenched and could not find employment for 6 months. On 15 January 2018; she received a new "*NCR Claim Number C48479*" from the NCR. On 29 June 2018; she received a Notice of Non-Referral from the NCR.
12. The Applicant averred that FNB did not comply with the Act as it did not conduct affordability assessments; and would not have granted the credit if it had done so. She alleged that FNB only required copies of her payslip on one occasion. At some stage; she had to move money between accounts in order to pay the various debts with the same bank; FNB.
13. During the hearing; the Applicant submitted that the Respondent's computerised affordability assessment methods could not accurately determine her income and household expenses. She vigorously questioned the Respondent's ability to determine her living expenses which were not

reflected on the credit bureau's report. These expenses include rental amounts, petrol, groceries to feed two children, school fees and clothing. Also; she pointed out that in its calculations; the Respondent omitted the amounts she paid to Outsurance, Autopage and Vodacom. She submitted that she signed the quotations without reading the fine print where the Respondent may have reflected her living expenses.

### **The Respondent's case**

14. The Respondent filed an answering affidavit. The deponent is Mr Gert van de Venter ("Mr Van de Venter"); an adult male person who is employed as a Credit Manager by FNB.
15. The salient facts of Mr Van de Venter's affidavit are that; on 22 June 2017; the NCR issued a closure letter to the Applicant in respect of her complaint that the Respondent granted credit to her recklessly. The reason for the closure was that the Applicant had a surplus income after the affordability assessments were conducted; and the granting of the loans did not appear to be reckless. The Respondent contended that the NCR correctly rejected the Applicant's complaint.
16. According to the Respondent; the NCR's closure letter fulfilled the same purpose that a notice of non-referral issued under Section 139(1)(a) of the NCA would do. Instead of approaching the Tribunal or a Magistrate's Court; the Applicant requested the NCR to re-open her case as she did not agree with the outcome. The NCR re-opened her case. The Respondent argued that; there is no basis in law that allows the NCR to conduct its own internal "appeals" of its findings or to revisit its initial Section 139(1)(a) of the NCA finding with the view of performing an investigation under Section 139(1)(c) of the NCA.
17. On 22 May 2018; the NCR issued another closure letter. In substance; though not in form; this letter complies with the provisions of Section 139(1)(a) of the NCA. In this letter; the NCR found that the Respondent did not extend reckless credit to the Applicant.
18. On 15 September 2017; the Applicant lodged a complaint with the Ombudsman for Banking Services ("OBS"). On 16 January 2018; the OBS advised the Applicant that it did not have the requisite jurisdiction to hear her complaint and closed its file.
19. In its defence; the Respondent raised three points *in limine*. These are discussed below.

### **The Respondent's first point *in limine***

20. The Respondent's first point *in limine* appears to be twofold. Firstly, the Respondent submitted that the Applicant's complaint was not referred to the Tribunal within the permitted time periods. According to

the Respondent; the Applicant received a notice from the NCR during November 2017 informing her that her case was closed. In the premises; the Applicant was expected to make her application in terms of Section 141(1)(b) of the NCA within 20 business days following the receipt of the NCR letter.

21. Secondly; the Respondent submitted that; Section 166(1)(a) of the NCA precludes the referral of a complaint to the Tribunal more than three years after the “*act or omission that is the cause of the complaint*”. In this regard; the Respondent submitted that the Discovery Credit Card and the FNB Revolving Loan credit agreements fall outside prescribed period as they were concluded on 6 November 2007 and on 7 May 2015 respectively.

### **The Respondent’s second point *in limine***

22. The Respondent’s second point *in limine* is that; there is no proper basis and sufficient information to substantiate the allegation of reckless credit granting or a declaration of over-indebtedness; in that:
  - 22.1. Contrary to the provisions of Section 80 of the NCA; the Applicant failed to provide evidence of her current financial means, prospects and obligations so as to enable the Tribunal to properly consider or apply the provisions of Section 83 of the NCA;:-
  - 22.2. The Applicant failed to provide the Tribunal with any evidence of her current financial circumstances; making it impossible for the Tribunal to make a finding in her favour. As a result; the Applicant is disqualified from the relief set out in Section 83 of the NCA;:- and
  - 22.3. As *dominus litis*; the Applicant is precluded from making out a case regarding her financial means, prospects and obligations in reply; and any attempt to do so should be struck out.

### **The Respondent’s third point *in limine***

23. The Respondent’s third point *in limine* is that; the Tribunal does not have jurisdiction to grant the relief the Applicant seeks in her complaint. In essence; the Respondent submitted that the Applicant did not make any case for the setting aside of any credit agreement; and there is no provision in the NCA that allows a refund to consumers following a finding under Section 83 of the NCA.

### **The Respondent’s Systems and Processes**

24. In addition to the three points *in limine*; the Respondent explained that it applies over-arching evaluative mechanisms, models and procedures in meeting its assessment obligations under Section 81 of the NCA. The mechanisms result is a fair and objective assessment and are consistent with the affordability assessment regulations of the NCA. Following the affordability assessment of each respective product; a quotation and pre-agreement statement is presented to a consumer. By

accepting the information presented during the application process; or by signing the pre-agreement statement; a consumer confirms and verifies the information used to conduct the affordability assessment.<sup>1</sup>

25. In each case where a credit agreement is concluded; a quotation is presented to the consumer in writing or on the computer screen; and the consumer is requested to confirm the Respondent's affordability assessment. If the consumer fails to confirm the information; or if the consumer alters the information to such an extent that it appears as if the consumer cannot afford the repayment; the application will automatically and without exception be rejected. When a written quotation is presented to a consumer; the consumer is afforded an opportunity to consider the quotation; and to confirm acceptance by signing the quotation.<sup>2</sup>
26. During each assessment; and irrespective of the product; the Respondent considers a consumer's past payment history and the records relating to his or her payments as they are recorded with the credit bureau; TransUnion. The Respondent would not have granted credit to the Applicant if; the Respondent's own internal records or the information obtained from the credit bureau indicated a severely adverse payment history. In the case of the Applicant; the records indicated that the applicant; as an existing customer of the Respondent; maintained and repaid her existing debt obligations.<sup>3</sup>
27. Mr Van de Venter went on to aver that:

*"The Respondent's system is automated to calculate a consumer's normalised income by considering the credits deposited into his/her transactional account. Using a series of algorithms; the Respondent's system is programmed to calculate a consumer's normalised income by considering the deposits made to an account. The Applicant's monthly net income, derived from her bank statements, were used to show material variance and, therefore, the average normalised net income over a period of six months preceding the credit application was utilised, which income was confirmed by the Applicant as being correct."*<sup>4</sup> (sic in toto).

28. Mr Van de Venter stated that the Applicant's debt obligations and debt repayment history were obtained via a link with TransUnion. The credit bureau information was automatically populated in the Respondent's internal system for purposes of assessing the Applicant's debt repayment history, her

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<sup>1</sup> Paragraph 30 of the Respondent's Answering Affidavit.

<sup>2</sup> Paragraph 31 of the Respondent's Answering Affidavit.

<sup>3</sup> Paragraph 33 of the Respondent's Answering Affidavit.

<sup>4</sup> Paragraph 35 of the Respondent's Answering Affidavit.

existing financial means, prospects and obligations. In addition; the Respondent relied on internal information including the Applicant's bank statements; and obligations under other credit agreements entered into between the Applicant and the Respondent.<sup>5</sup> In respect of the Applicant; the records showed that the Applicant maintained and repaid her existing debts obligations well.

29. In paragraph 40 of the Respondent's Answering Affidavit, Mr Van de Venter stated that:

*"The evaluative mechanism, or model, used by the Bank to determine the Applicant's living expenses, was based on Statistics SA's Household Income and Expenditure Survey (IES) in order to determine the average monthly living expenses of consumers of the same demographic and income class and to ensure that the model results were based on a fair and objective assessment. The model used in the present case is more conservative than the current expense norm table reflected in the Regulations. The Applicant also confirmed the Respondent's estimation of her living expenses. The Applicant was given an opportunity to rectify the expenses to a higher value if she was not in agreement with the value was deemed to be too low." (sic in toto)*

30. Mr Van de Venter submitted that the Respondent complied with the requirements set out in Regulation 23A(9) and (10).

### **Affordability Assessments**

#### **The Discovery credit card facility – Account Number: 4-000-060-151-474**

31. On 9 November 2007; the Applicant utilised the FNB Online Banking platform to apply for a Discovery credit card facility with a credit limit of R13 800.00. In addition to the information that was captured by the Applicant; the Respondent's electronic system also monitored the Applicant's cheque account. In accordance with Section 78(3) of the NCA; an average monthly income was calculated by the Respondent's system. This was done by considering the monthly credits paid to the Applicant's cheque account during the period of April 2007 to October 2007. According to the Respondent;

*"For purposes of assessing a consumer's income when application is made for a credit card, the Bank's system considers all salary deposits, cash deposits and ancillary payments received as credits into the account as income."<sup>6</sup>*

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<sup>5</sup> Paragraph 37 of the Respondent's Answering Affidavit.

<sup>6</sup> Paragraph 45.1.1 of the Respondent's Answering Affidavit.

32. Between 16 April 2007 and 16 October 2007; the Applicant received electronic monthly credits in the sum of R50 929.51 in her account. She also made cash deposits of R27 987.90 to her account. The Respondent's system calculated an average monthly income of R10 533.00 during the time of assessment.<sup>7</sup>The Respondent determined the Applicant's credit bureau obligations to be R1 617.00. Using its expenses model; the Respondent determined the Applicant's monthly living expenses to be R5 833.00. The assessment resulted in the Respondent finding that; after payment of the contractual instalment of R896.00 for the credit card facility; the Applicant had a surplus of R2187.00. The Applicant confirmed the information; and that she understood the costs, risk and obligations in respect of the credit facility. Consequently; a credit facility with a limit of R13 800.00 was made available to the Applicant.
33. The Respondent submitted that due to the amalgamation of Business Units within FNB; a system change occurred; as a result the Respondent is not able to locate a copy of the credit agreement despite a diligent search. The Respondent attached a statement dated 7 December 2007 from which it appears that the Applicant utilised the facility and honoured her monthly obligations.

**The FNB Revolving Loan – Account Number: [4-000-063-091-251\[....\]](#)**

34. Mr Van de Venter averred that; on 7 May 2015; the Applicant visited the Lambton branch of FNB and applied for a revolving credit loan of R10 000.00. Even though the Applicant was physically at the branch; the consultant would have used FNB's pre-populated automated assessment to conduct the requisite affordability assessment. In this case; an average income was calculated by FNB's system by considering the monthly credits paid to the Applicant's cheque account between 16 October 2014 and 16 April 2015. During this period; the Applicant received electronic payments in the sum of R130 575.42 and cash deposits in the sum of R1 800.00. The Respondent determined that the Applicant earned an average monthly income of R21 154.00.
35. Using its expense model; FNB determined that the Applicant's living expenses were R6 648.00. The Applicant was given an opportunity to confirm if the living expenses were correct or increase the amount thereof. The Respondent found that the Applicant's monthly debt obligations ("credit bureau amounts and internal records") were R11 260.00; and that the Applicant would have a surplus of R2 956.00 after payment of the contractual instalment of R290.00. The Respondent submitted that it misplaced the "Pre-Agreement and Quotation/costs of credit".
36. The Respondent submitted that it took reasonable steps to assess the Applicant's financial circumstances; and following the assessment; it was determined that the Applicant could afford the

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<sup>7</sup> Paragraphs 45.2 and 45.3 of the Respondent's Answering Affidavit.



monthly instalments of the loan she applied for. The Applicant confirmed that she understood the costs, risks and obligations in respect of the agreement.

### **The FNB Premier Credit Card Limit increase**

37. On 14 September 2015; the Applicant applied at the Respondent's Lambton branch to increase her credit limit to R77 000.00. As in the case of the above-mentioned accounts; the Respondent's electronic system monitored the Applicant's cheque account; and worked out the average monthly income deposited into the Applicant's cheque account. Between 16 January 2015 and 15 September 2015; the Applicant's average monthly income was R25 732.00.
38. The Applicant's declared living expenses were R7 533.00. The Respondent checked the credit bureau to determine whether the Applicant had any other obligations apart from those she had with the Respondent. These amounted to R11 214.00. This resulted in the Respondent increasing the Applicant's credit card limit to R77 000.00. The Respondent determined that the Applicant had a surplus of R1 685.00 after paying the contractual instalment of R5 300.00. The Applicant accepted the terms and conditions of the credit agreement and signed it. The Applicant confirmed that she understood the costs, risks and obligations associated with the credit agreement.
39. The Respondent submitted that it took reasonable steps to assess the Applicant's financial circumstances; and following the assessment; it was determined that the Applicant could afford the monthly instalments of the limit increase she applied for.

### **The FNB Overdraft – Account Number: 62068624686**

40. On 7 December 2015; the Applicant applied at the Lambton Branch to increase her overdraft facility limit to R80 000.00. The Respondent's electronic system monitored the Applicant's cheque account; and worked out the average monthly income deposited into the Applicant's cheque account. The Respondent determined that the Applicant's average monthly income between 16 April 2015 and 7 December 2015 was R28 875.00. Using its expense model; FNB determined the Applicant's living expenses to be R9 083.00. The Respondent checked the Applicant's credit bureau obligations. These amounted to R14 095.00. The Respondent determined that; after the contractual instalment of R1 607.00; the Applicant had a surplus of R4 090.00. The Applicant signed the quotation.
41. The Respondent submitted that; by accepting and signing the quotation; the Applicant declared that her monthly living expenses were R9 083.00; and that she received a gross monthly income of R28

875.00 or higher. Further; that the information is authentic; and she understood the risks, costs, rights, obligations etc.

42. The Respondent submitted that; it took reasonable steps to assess the Applicant's financial circumstances. Following the assessment and information at hand; which was confirmed by the Applicant; it was determined that the Applicant could afford the monthly instalments of the limit increase she applied for.
43. The rest of Mr Van de Venter's affidavit contains various denials of the averments made by the Applicant in its founding affidavit. In essence; the Respondent denies the allegations of reckless lending.

### **ISSUES TO BE DECIDED**

44. The Tribunal is required to determine whether the Applicant should be granted leave to refer her complaint; that the Respondent extended credit to her recklessly; to the Tribunal.

### **THE LAW APPLICABLE TO THE APPLICATION**

45. Section 139(1) of the NCA states-

*"Upon initiating or accepting a complaint in terms of section 136, the National Credit Regulator may issue a notice of non-referral to the complainant in the prescribed form, if the complaint appears to be frivolous or vexatious, or does not allege any facts which, if true, would constitute grounds for a remedy under this Act."*

46. Section 140(1)(a) of the NCA states-

*"After completing an investigation into a complaint, the National Credit Regulator may issue a notice of non-referral in the prescribed form."*

47. Section 141(1)(b) of the NCA states-

*"If the National Credit Regulator issues a notice of not referral in response to a complaint other than a complaint concerning section 61 or an offence in terms of this Act, the complainant concerned may refer the matter directly to the Tribunal, with the leave of the Tribunal."*

48. NCR Form 31 is the prescribed form for notices of non-referral.

49. The NCA does not specify the factors which the Tribunal must consider in determining whether an applicant should be granted leave to self-refer a matter to the Tribunal. In previous decisions; the Tribunal has referred to *Westinghouse Brake and Equipment (Pty) Ltd*<sup>8</sup> where the court was dealing with the issue of leave to appeal against a judgment. In *Westinghouse*; the court held that the relevant criteria are whether the applicant has reasonable prospects of success on appeal; and whether or not the case was of substantial importance to the applicant or to both him and the respondent.
50. When considering whether to grant an applicant leave to refer; the Tribunal has adopted the same test as applied in the High Court for applications for “leave” .<sup>9</sup> The Tribunal will therefore consider the following factors:
- 50.1. whether the matter is of substantial importance to the Applicant; and
- 50.2. the Applicant’s reasonable prospects of success with the referral.

#### **ANALYSIS OF THE EVIDENCE AND REASONS FOR JUDGEMENT**

51. It is apparent from the submissions made by both parties that; this matter is of substantial importance to both parties. This evidenced by the extensive papers filed by both parties wherein arguments and counter-arguments related to this matter are expressed. The Respondent’s attorney; Mr Ten-Nappel conceded that the matter is of substantial importance to the Applicant.
52. Regarding the Applicant’s reasonable prospects of success; the first question is whether the substance of the Applicant’s complaint falls within the ambit of the NCA. The second question is whether there are sufficient facts upon which the Tribunal may make a finding in favour of the Applicant; without deciding on the merits of the matter. The matter cannot be referred to the Tribunal as a fishing expedition to establish the facts.
53. During the hearing; Mr Ten Nappel argued that; in terms of Section 166 of the NCA; the Applicant was precluded from including FNB Discovery Credit Card with Account Number 4-000-080-151-474 and FNB Revolving Loan with Account Number: 4-000-063-091-251 in her application for leave. The Respondent’s argument in this regard; is that the NCR is not allowed to close and re-open its file. Therefore; the NCR’s letter of November 2017 constituted a notice of non-referral; and the Applicant was supposed to have filed its application for leave within 20 business days of the issuing of this letter.

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<sup>8</sup> 1986 (2) SA 555 (A)

<sup>9</sup> This issue has also been considered by the Tribunal in a number of other decisions , see for example, *MV Chauke v Standard Bank et al* NCT/4658/2012/141(1)(P), and *Coertze and Burger v Young* NCTT/7142/2012/73(3)&75(1)(b) CPA and *Esther Rhulani Tshwale (obo True Harvest College) v Faitzan Properties* NCT/12505/2014/75(1)(b) & (2) CPA.

This argument goes beyond the boundaries of the current application. It deserves to be properly ventilated and adjudicated during the hearing of the main matter.

54. Regarding allegations of reckless credit granting; Mr Ten Napel argued that the Respondent properly conducted the affordability assessments. If the Respondent's assessments were not correct; then the Applicant's inability or failure to correct the Respondent's affordability assessments means that the Applicant was dishonest. In terms of Section 81(4) of the NCA; such dishonesty on the part of the Applicant would provide the Respondent with a complete defence against allegations of reckless lending. But; the Respondent did not mention any instance where it requested information from the Applicant and the latter failed to fully and truthfully answer such request. In any event; this argument goes beyond the boundaries of the current application. It deserves to be properly ventilated and adjudicated during the hearing of the main matter.
55. The relief that the Applicant wants, should this matter be heard on the merits, is for "*all the debt written off and to be reimbursed for payments made under debt review since date of claim in 2016.*" Section 83(2)(a) of the NCA. Section 83(2) states-

*"If a court of Tribunal declares that a credit agreement is reckless in terms of section 80(1)(a) or 80(1)(b(i), **the court or the Tribunal, as the case may be, may make an order setting aside all or part of the consumer's rights and obligations under that agreement (emphasis added), as the court determines just and reasonable in the circumstances.**"*

56. Section 80(1)(a) of the NCA states-

*"A credit agreement is reckless if, at the time that the agreement was made, or at the time when the amount approved in terms of the agreement is increased, other than an increase in terms of section 119(4) the credit provider failed to conduct an assessment as required by section 81(2), irrespective of what the outcome of such an assessment might have concluded at the time."*

57. Section 81(2)(a)(iii) of the NCA states-

*"A credit provider must not enter into a credit agreement without first taking reasonable steps to assess the proposed consumer's (iii) existing financial means, prospects and **obligations (emphasis added).**"*

58. Section 81(2)(a)(iii) of the NCA makes it clear that part of the relief that the Applicant seeks; ie. setting aside part or all of the consumer's obligations; is provided for in the NCA. The second issue is whether

the Applicant enjoys reasonable prospects of success; without deciding on the merits of the matter. The Tribunal finds that there is a reasonable possibility that the Tribunal may find that; the Respondent failed to take reasonable steps to assess the Applicant's financial means and obligations.

59. In particular; the Tribunal finds that the Applicant enjoys reasonable prospects of proving that; the method used by the Respondent to calculate her income; and its use of "*Statistics SA's Household Income and Expenditure Survey (IES) in order to determine the average monthly living expenses of consumers of the same demographic and income class*" to determine the Applicant's financial obligations; do not meet the requirements of Section 81(2)(a)(iii) of the NCA .
60. Regarding the points *in limine* raised by the Respondent; this panel of the Tribunal does not consider it appropriate to make any pronouncement thereon. Given the nature and substance of the points *in limine*; it is in the interest of justice that the parties be given an opportunity to fully present their arguments during the hearing of the main matter. This will also enable the Tribunal to properly analyse these points and make a determination on whether such points should be upheld or dismissed.

## CONCLUSION

61. The Applicant has satisfied the requirements for granting leave in terms of Section 141(1) of the NCA.

## ORDER

62. The Tribunal makes the following order:
- 62.1. The Applicant is granted leave to refer her complaint directly to the Tribunal; and
- 62.2. There is no order made as to costs.

Thus done and signed; on this the 27<sup>th</sup> day of February 2019.

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Andisa Potwana

Presiding Tribunal Member

Adv F Manamela and Ms M Nkomo concurring.

