

**IN THE NATIONAL CONSUMER TRIBUNAL**

**HELD IN CENTURION**

Case number: **NCT/150759/2020/141(1)**

In the matter between:

**FAKAZILE NANCY MATSHOBA**

APPLICANT

And

**SA TAXI FINANCE SOLUTIONS (PTY) LTD**

RESPONDENT

**Coram**

Adv J Simpson - Presiding Tribunal Member

Prof K Moodaliyar - Tribunal Member

Ms P Beck - Tribunal Member

Date of Hearing - 28 October 2020

Date of Judgment - 30 October 2020

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**JUDGMENT AND REASONS**

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**THE PARTIES**

1. The Applicant in this matter is Fakazile Nancy Matshoba, an adult female, residing in Midrand (the “Applicant” or “Ms Matshoba”). At the hearing Mr Hendrik Johannes De Beer appeared on behalf of the Applicant (“Mr De Beer”). Mr De Beer appears to be a consultant specialising in taxi finance who lodged the complaint on behalf of the Applicant.

2. The Respondent is SA Taxi Finance Solutions Pty Ltd (the “Respondent” or “SA Taxi Finance”). At the hearing SA Taxi was represented by Mr A Mundell of the Johannesburg Bar, instructed by MLB Attorneys.

## APPLICATION TYPE

3. This is an application in terms of Section 141(1) of the National Credit Act, Act 34 of 2005, (“the NCA”).
4. Section 141(1) of the NCA states the following –

**141. Referral to Tribunal.**—(1) *If the National Credit Regulator issues a notice of non 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—*

*(a) the consumer court of the province within which the complainant resides, or in which the respondent has its principal place of business in the Republic, subject to the provincial legislation governing the operation of that consumer court; or*

*(b) the Tribunal, with the leave of the Tribunal.*

## BACKGROUND

5. In April 2013 Ms Matshoba applied to SA Taxi Finance for a loan to purchase a taxi for business purposes. According to the documentation attached to the application she was granted a taxi route license to operate two taxis between Soweto and Rustenburg. The loan was granted to purchase a 2007 model Toyota Panel Van low roof for R253 576.29. In 2018 Ms Matshoba was unable to pay the monthly instalments on the loan. SA Taxi Finance took default judgment against Ms Matshoba but was unable to locate and attach the vehicle. Ms Matshoba alleges that SA Taxi Finance was reckless in granting the loan to her and financed a “fake” taxi that was illegally converted from a panel van to a taxi. She wants all her payments on the loan refunded to her and a substantial amount in damages.

6. In February 2018 Ms Matshoba lodged a complaint against SA Taxi Finance with the National Credit Regulator (“NCR”) alleging that the loan was granted recklessly. On 19 December 2019, the NCR issued a notice of non-referral stating that SA Taxi Finance had not granted the loan recklessly. The notice further stated that the complaint could not be referred as more than three years had elapsed since the loan was granted. Therefore, the NCR was therefore not prepared to take the matter any further.
7. Mr De Beer lodged this current application with the Tribunal on 20 January 2020. The Respondent filed an answering affidavit on 19 February 2020. The Respondent also applied for condonation for the late filing of the affidavit. Condonation for the late filing was granted in a written judgment dated 23 July 2020. On 24 July 2020, Mr De Beer filed the replying affidavit to the answering affidavit.
8. The matter was then set down for a hearing on the leave to refer. This judgment deals with the application for leave to refer.

## **THE HEARING**

9. The hearing was conducted via Zoom audio and video transmission.
10. Mr De Beer made numerous submissions regarding the loan being granted recklessly. For the purposes of this judgment it is not necessary to reflect all the allegations made. In summary, Mr De Beer alleges that the taxi was illegally converted from a panel van to a taxi. The value of the taxi was inflated from approximately R70 000 to over R250 000. The taxi operating license was most probably forged and not genuine. Ms Matshoba had no previous experience in operating a taxi. Mr Matshoba should never have been granted the loan.
11. The Tribunal requested Mr De Beer to address it regarding the possible prescription of the claim. Mr De Beer conceded that this aspect did present a challenge to the application. He requested that the prescription period on the claim only run from the date when the credit agreement would have expired, not from when the loan was granted.
12. Mr Mundell submitted that the application had prescribed in terms of section 166 of the NCA. The section prohibited the Tribunal from hearing the matter as it had prescribed.

## APPLICATION FOR LEAVE

13. In terms of section 141(1) of the NCA, the Applicant may only refer the matter directly to the Tribunal *with leave of the Tribunal*.
14. In determining whether the Applicant should be granted leave to refer the matter directly to the Tribunal, the Tribunal must consider the requirements for the granting of “leave”.
15. In *Westinghouse Brake and Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd*<sup>1</sup> it was held that-

*“In applications for leave to appeal properly brought before the appropriate court in terms of the old sec 20, read with sec 21 as it then was, the only relevant criteria were whether the applicant had 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.”*

16. The Tribunal will therefore, when considering whether to grant the Applicant leave to refer the matter or not, use the same test as applied in the High Court for applications for “leave” and will consider:

16.1 the Applicant’s reasonable prospects of success with the referral; and

16.2 whether the matter is of substantial importance to the Applicant, the Respondent or both.

17. It is firstly very clear that the matter is of substantial importance to both parties. Ms Matshoba has gone to great lengths to pursue the matter through the NCR and the Tribunal. SA Taxi Finance has a substantial interest in refuting the allegation of reckless lending.
18. Moving on to the requirement of reasonable prospects of success. Mr De Beer has submitted numerous allegations which create a great deal of suspicion regarding the granting of the loan. Under normal circumstances the Tribunal would most probably require the NCR to investigate the allegations further.

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<sup>1</sup> 1986 (2) SA 555 (A). Also see Coertze and Burger v Young NCT/7142/2012/75(1)(b)&(2)

19. Unfortunately, the Applicant lodged the complaint with the NCR far too late. The loan was granted in 2013, the application was only lodged with the NCR in 2018, approximately 5 years later. Section 166<sup>2</sup> of the NCA states that a complaint may not be referred or made to the Tribunal more than three years after the act or omission took place. The allegation of reckless lending arose in April 2013, when the loan was granted, the Applicant had until April 2016 to lodge the complaint with the NCR. Had the complaint been lodged by April 2016, the Tribunal would have still considered hearing the allegations made.

## CONCLUSION

20. The Tribunal finds that there is no reasonable prospect of Ms Matshoba succeeding in her claim against SA Taxi Finance, as the application has prescribed in terms of section 166 of the NCA.

## ORDER

21. Accordingly, the Tribunal makes the following order –

21.1 The Applicant's application for leave to refer the matter directly to the Tribunal is refused; and

21.2 There is no order as to costs.

THUS DONE IN PRETORIA ON THIS 30<sup>TH</sup> DAY OF OCTOBER 2020

[signed]

**Adv. J. Simpson**  
**Presiding Tribunal Member**

Prof. K Moodaliyar (Tribunal Member) and Ms P Beck (Tribunal Member) concurring

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<sup>2</sup> **166. Limitations of bringing action.**— (1) A complaint in terms of this Act may not be referred or made to the Tribunal or to a consumer court more than three years after—  
(a) the act or omission that is the cause of the complaint; or  
(b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.

**Authorised for issue by The National Consumer Tribunal**

**National Consumer Tribunal**

**Ground Floor, Building B**

**Lakefield Office Park**

**272 West Avenue, Centurion, 0157**

**[www.thenct.org.za](http://www.thenct.org.za)**



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