

**IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CHAMBERS**

Case Number: **NCT/271555/2023/75(1)(b)**

In the matter between:

JENNIFER MARY CORIN

APPLICANT

and

RED IVORY BANQUETING (PTY) LTD

RESPONDENT

Coram:

Prof K Moodaliyar - Presiding Tribunal Member

JUDGMENT AND REASONS

THE PARTIES

1. The Applicant is Jennifer Mary Corin, an adult female ("the Applicant" or "Ms Corin"). The Applicant is a consumer as defined in section 1 of the Consumer Protection Act 68 of 2008 ("the CPA" or "the Act"). At the hearing, the Applicant represented herself.
2. The Respondent is Red Ivory Banqueting (Pty) Ltd (registration number 2004/001962/07), a company duly registered in terms of the corporate laws of the Republic of South Africa with its registered address at Portion 16 Farm de Rust, Hartebeesport, North West ("the Respondent").

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 –
“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. On 7 August 2019, the Applicant entered into an agreement with the Respondent to book a wedding venue and paid the Respondent a deposit of R5000,00 to secure the booking. The Applicant lives in Dubai, and the Respondent was aware of this from the outset.
6. Due to the COVID-19 pandemic, the South African government prohibited gatherings, including weddings during the lockdown period. All international borders were closed as well. Due to government regulations and the uncertainty of the pandemic, the Applicant was unable to host her wedding on the preferred date, namely 24 October 2020.
7. The Applicant thus entered into negotiations with the Respondent to seek an alternative date. On 10 June 2020, the Applicant agreed to postpone the wedding to 6 March 2021 and reiterated the arrangement to host the wedding at the Red Ivory venue.

8. On 21 August 2021, The Applicant received an email from the supplier who advertised a Spring Day Special. The "Spring Day Special" was made up of two options, namely:
 - 8.1 Option A: to pay R75,000.00 towards the wedding and receive R10 000.00 off the final invoice;
 - or
 - 8.2 Option B: where they pay the full outstanding amount due, for their wedding and receive a 15% discount on the issued invoice.
9. The Applicant opted for Option A, on the *Spring Day Special*, and made the full payment of R75 000 on 8 September 2020. In total by this date, R80 000 was handed over by the Applicant to the Respondent.
10. The standard terms and conditions of the Respondent's agreement only required the Applicant to make a payment in the amount of R35,000.00 on or before the date three months prior to the wedding, and the remaining balance was only due 14 days prior to the wedding day. The Applicant says that she made the full payment instead because she wanted to show her true intention to the Respondent that she was serious about going ahead with the Respondent arranging the event.
11. On 20 December 2020, the South African government closed its international borders again, due to the ongoing COVID-19 pandemic and spike in infections. Due to this uncertainty of the pandemic and sudden government-imposed lockdowns, the Applicant informed the Respondent that they were unable to take the risk of flying to South Africa in March 2021.
12. Due to the uncertainty of the lockdowns, the Applicant requested information from the Respondent regarding the possibility of a refund of the R80 000 paid. The Applicant states that the Respondent did not respond to numerous emails. The Respondent eventually responded that a refund would not be possible.
13. After numerous discussions with the Respondent, the Applicant decided to postpone the wedding to 19 February 2022.

14. As the COVID-19 pandemic was still ongoing, on 26 November 2021 the UAE government suspended its flights to and from South Africa with effect from 29 November 2021. The Applicant immediately informed the Respondent of this suspension to which they agreed to reach a final agreement and a possible way forward by 10 January 2022.
15. By 10 January 2022 the UAE had still not lifted their suspension on their flights from South Africa to the UAE. The Applicant informed the Respondent of this and explained that South Africa was on the UAE's "red list" and the UAE expected all travellers from South Africa (a "red list" country) to be on a "UAE "green list"" country for a minimum of fifteen (15) days/fourteen (14) nights, before entering the UAE. In the event that travellers do not follow and abide by these rules and regulations stipulated and enforced by the UAE government, they will be denied entry into the UAE.
16. It was too risky and not financially viable for the Applicant (and her guests) to come to South Africa, considering the accommodation, food, COVID-19 testing, and other costs involved whilst staying in a "green list" country. The Respondent was also well aware that many of Applicant's guests were coming from overseas and would have to go through the same process to get back into their countries of residence.
17. Due to the continued Covid19 restrictions the Applicant was unable to host the wedding on 19 February 2022, and the Applicant once again asked for a full refund from the Respondent which was denied.
18. The Applicant lodged a complaint against the Respondent on 14 July 2022 with the Consumer Goods and Services Ombud ("the CGSO"). The CGSO confirmed in their initial recommendation that consumers have the right to cancel advance bookings subject to the payment of a reasonable cancellation fee which is calculated taking various factors, as stated in the CPA, into account. The CGSO further found that the supplier's business practices are in contravention of the CPA. The Adjudicator of the CGSO made his initial recommendation that the supplier refund a sum of R57,375.00.

19. Although the Respondent agreed to pay the abovementioned refund in two installments, the Applicant rejected the outcome and objected to the CGSO's calculation of the refund. The CGSO set aside its initial recommendation and on 19 December 2022 recommended that the Applicant be refunded R60 000.00 which amounts to 25% less than the full price paid, which the CGSO said would cover reasonable administrative costs and management of the booking, and the CGSO held again that the supplier was in contravention of the CPA.
20. The Respondent was not willing to accept the CGSO's decision and failed to pay the Applicant the R60,000.00 refund. The Applicant then submitted a complaint to the National Consumer Commission ("the NCC").
21. On 23 April 2023, the NCC rejected the complaint on the basis that the matter was already decided by the CGSO.
22. The relief sought by the Applicant should her leave to refer application to the Tribunal be successful, is for the Tribunal to consider and adjudicate and grant an order in her favour. She is willing to accept that her initial deposit of R5 000 was non-refundable. She would like the balance of her refund of R75 000.00 to be paid to her because her wedding was postponed due to the Covid-19 pandemic border control shutdowns and UAE travel restrictions and lockdowns and restrictions in South Africa, and she requested the refund before the event could take place.
23. The relief sought by the Applicant, should her leave to refer to the Tribunal be successful, is for the Tribunal to consider and adjudicate and grant an order on the unsolicited services complaint; issue a certificate of prohibited conduct; issue a certificate of unconscionable conduct; consider issue an administrative penalty and award costs in the Applicant's favour.

PROCEDURAL CONSIDERATIONS

24. 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*.

25. Previously, the Tribunal held a formal hearing on leave to refer with all the parties present. In the matter of *Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd and Others* (Case no 314/2020) [2021] ZASCA 91 (25 June 2021) *SAFLII*, the court provided useful guidance to the Tribunal in decisions regarding leave to refer. It held that a formal hearing on leave to refer was unnecessary, there was no test to be applied and the decision to consider leave could not be appealed. The court held -

“[15] As I have explained, the NCA provides for an expeditious, informal, and cost-effective complaints procedure. Section 141(1)(b) confers on the Tribunal a wide, largely unfettered discretion to permit a direct referral. The NCA does not require a formal application to be made and it is not necessary for purposes of the present appeal, nor is it desirable, to circumscribe the factors to which the Tribunal should have regard. There is no test to be applied in deciding whether or not to grant a direct referral to it in respect of a complaint. The purpose of the provision is simply for the Tribunal to consider the complaint afresh, with the benefit of any findings by the Regulator, and to decide whether it deserves its attention. Circumstances which may influence its decision may include the prospects of success, the importance of the issue, the public interest to have a decision on the matter, the allocation of resources, the complainant’s interest in the relief sought, and the fact that the Regulator did not consider that it merited a hearing before the Tribunal. The list is not intended to be exhaustive.”

26. Therefore, the Tribunal will consider the evidence available and whether leave to refer should be granted.

CONSIDERATION OF THE EVIDENCE

27. The Applicant has provided evidence of her payments to the Respondent and the correspondence she had with the Respondent. She had asked numerous times about a full refund and sought a clear direction from the outset as to how the process would work.

28. The Applicant received an outcome from the CGSO which concluded that the Applicant is entitled to a refund of R60, 000.00 which included a 24% deduction for costs, which she was willing to accept.
29. The Respondent refused to pay the said amount and the Applicant filed a complaint with the NCC.
30. The NCC subsequently rejected the complaint on the basis that the CGSO had made a decision.
31. In the decision of the CGSO it states: *“If either Party fails to comply, the CGSO shall inform the Parties of further options available to them, including a referral to the NCC or Tribunal, and the recording of the resolution of the Dispute in the form of an order and having made an order an order of court or the institution of legal proceedings,…”*
32. Thus, the Applicant was well within her right to file a complaint with the NCC as the Respondent had failed to comply with the CGSO’s decision.

ORDER

33. Accordingly, for the reasons set out above, the Tribunal makes the following order:

33.1 The application for leave to refer the matter directly to the Tribunal is granted;
and

33.2 No order is made as to costs.

DATED ON THIS 20 SEPTEMBER 2023

[SIGNED]

K MOODALIYAR

PRESIDING MEMBER

Authorised for issue by The National Consumer Tribunal

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