

**IN THE NATIONAL CONSUMER TRIBUNAL  
SITUATED IN CENTURION**

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

In the matter between:

**JENNIFER MARY CORIN**

**APPLICANT**

and

**RED IVORY BANQUETING (PTY) LTD**

**RESPONDENT**

Coram:

Dr A Potwana - Presiding Tribunal member

Ms P Manzi-Ntshingila - Tribunal member

Mr S Mbhele - Tribunal member

Date of Hearing: 5 July 2024

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**JUDGMENT AND REASONS**

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**THE PARTIES**

1. The applicant is Jennifer Mary Corin, an adult female who is a consumer, as defined in section 1 of the Consumer Protection Act 68 of 2008 (CPA). Ms. Romi Comyn, a non-practising attorney, represented the applicant in the hearing.
2. The respondent is Red Ivory Banqueting (Pty) Ltd, a supplier as defined in section 1 of the CPA. The respondent's managing director, Mr James Gibson, represented the respondent in the hearing.
3. Collectively, the applicant and the respondent are referred to as "the parties".

**TYPE OF APPLICATION AND JURISDICTION**

4. The applicant was granted leave to refer her complaint to the Tribunal in terms of section 75(1)(b) of the CPA.
5. The Tribunal has jurisdiction in terms of section 27(a) of the National Credit Act 34 of 2005 (NCA) to hear this application.

## INTRODUCTION AND BACKGROUND

6. In "*Part D: Order sought from the Tribunal*" of the prescribed form for applying for leave to refer matters directly to the Tribunal, Form TI.73(3) & 75(1)(b) & 2 CPA, the applicant stated that if leave is granted, she would seek a refund of R75 000.00.
7. In her founding affidavit, the applicant averred that on 7 August 2019, she entered into a written agreement with the respondent in which she booked a wedding venue. To secure the booking for her preferred date, she paid the required a deposit of R5000.00 to the respondent. From the outset, she made it clear to the respondent that her booking was for a destination wedding as she and her fiancé lived in Dubai in the United Arab Emirates.
8. Due to the unexpected COVID-19 pandemic in 2020, all borders were closed, and no international travel was permitted from March 2020. The South African government also prohibited all gatherings or weddings in South Africa during the national lockdown. Consequently, her wedding plans were put on hold and the wedding could not occur on the couple's preferred date of 24 October 2020. On 10 June 2020, the parties agreed to postpone the wedding until 6 March 2021. On 21 August 2020, the applicant received an email from the respondent advertising a spring day special, which was made up of two options, namely:
  - 8.1. Option A: to pay R75 000.00 towards their wedding and receive R10 000.00 of their final invoice; or
  - 8.2. Option B: to pay the total outstanding amount due for their wedding and receive a 15% discount on the issued invoice.
9. The applicant and her fiancé opted for option A, and she paid an additional R75 000.00 on 8 September 2020, even though the terms and conditions only required her to pay R35 000.00 three months before the day of the wedding and the remaining balance was only due 14 days prior to the wedding day.
10. On 29 December 2020, South Africa closed its borders to international travellers again due to the ongoing Covid 19 pandemic and a spike in infections. Due to this uncertainty, the applicant informed the supplier that they could not take the risk of flying to South Africa in March 2021. As a result of this uncertainty and sudden government-imposed lockdowns, she enquired and requested further information on a possible refund of the R80 000.00 already paid to the respondent. The respondent initially ignored her but, due to her persistence, later informed her that a refund would be possible.
11. After numerous discussions with the respondent, the parties agreed that the wedding would occur on 19 February 2022. By 10 January 2022, the UAE had not lifted its suspension of flights from South Africa to the UAE. She informed the respondent of this and explained that South Africa was on the UAE's red list. This meant that all travellers from South Africa had to wait for a minimum of 15 days or 14 nights in a UAE green list country before entering the UAE. It was impossible for the applicant and her fiancé to spend a

minimum of 15 days in a green list country at an extra cost to themselves before entering the UAE after the wedding. Due to the continued restrictions, it became clear that they could not have the wedding on 19 February 2022. They could not postpone their wedding for the third time with the supplier and requested a refund. The respondent ignored the request.

12. The applicant submits that she should not be prejudiced because of an unforeseen and unavoidable event and wants to assert her rights provided under section 17(2) of the CPA. She filed a complaint with the Consumer Goods and Services Ombud (“CGSO”), which recommended that the respondent refund her the sum of R57 375.00. She rejected the CGSO’s recommendation because she believed that the calculation was mathematically unsound. The CGSO amended and set aside its initial recommendation and recommended a refund of R60 000.00. Although the recommended amount was not completely justified, she accepted. The respondent, however, was not willing to accept this recommendation. Subsequently, she filed a complaint with the National Consumer Commission, which later issued a Notice of Non-Referral. She believes that a refund of R75 000.00 is justified and fair.
13. The respondent filed an answering affidavit. It argues that it acted in a bona fide manner at all material times, abided by the decision of the CGSO, and offered to pay R57 375.00 in two instalments, which the applicant did not accept. It argues that the applicant is acting in bad faith by not accepting the recommendation of the CGSO. It asserts that these proceedings are vexatious and an abuse of process as the respondent went to great lengths to accommodate the applicant at every juncture. The applicant is responsible for not executing the contract because she breached the written agreement several times where *force majeure* or a supervening impossibility was not applicable. The respondent was fully operational and willing to proceed with the wedding at all relevant times. The wedding was never objectively impossible. On two occasions, the wedding could have proceeded, albeit with some restrictions. The applicant could have held her wedding on the third date, 19 February 2023. The applicant cancelled the wedding on 10 January 2022 for the date booked for 19 February 2022. This short notice made it impossible for the respondent to get a replacement wedding. Most weddings are typically booked 9-12 months in advance. The respondent was unable to book another wedding for that date.
14. The respondent further argues that it suffered an economic loss as it could not book another wedding on the date chosen by the applicant. Its wage bill is R300 000.00 per month. With an average of 8 weddings per month, R37 500.00 is allocated as a fixed cost for each wedding. In addition, the respondent alluded to fixed costs of R30 000.00 for the bond, R15 000.00 for security costs, and R15 000.00 for insurance costs. Other costs are for maintaining a well-run venue, regular maintenance on all safety or fire equipment, extractor fans, air conditioners, laundry equipment, vehicles, electric fencing, fire breaks, painting and general maintenance, gardens, etc. It argues that it is entitled to charge a reasonable cancellation fee as provided under section 17 of the CPA.

15. The applicant filed a replying affidavit. She submits that the respondent rejected the amended and final offer of R60 000.00 made by the CGSO. She denies that the proceedings are vexatious and contends that she always acted in good faith. She submits that she was forced to take legal action when the respondent refused to get back to her with a possible settlement offer. She never denied that the respondent is entitled to a reasonable cancellation fee as provided for under section 17 of the CPA. She states that she accepted the revised recommendation made by the CGSO. Furthermore, she did not breach the contract with the respondent. She denies that she was acting in bad faith.

## THE LAW

16. Section 17(2) to (5) of the CPA states:

- “(2) Subject to subsections (3) and (4), a consumer has the right to cancel any advance booking, reservation or order for any goods or services to be supplied.
- (3) A supplier who makes a commitment or accepts a reservation to supply goods or services on a later date may—
- (a) require payment of a reasonable deposit in advance; and
  - (b) impose a reasonable charge for cancellation of the order or reservation, subject to subsection (5).
- (4) For the purposes of this section, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to—
- (a) the nature of the goods or services that were reserved or booked;
  - (b) the length of notice of cancellation provided by the consumer;
  - (c) the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and
  - (d) the general practice of the relevant industry.
- (5) A supplier may not impose any cancellation fee in respect of a booking, reservation or order if the consumer is unable to honour the booking, reservation or order because of the death or hospitalisation of the person for whom, or for whose benefit the booking, reservation or order was made.”

## CONSIDERATION OF THE MERITS

17. It is common cause that, due to the Covid-19 pandemic and related travelling restrictions, the parties agreed to change the date for rendering the services required by the applicant on two occasions. On 10 January 2023, the applicant cancelled the booking and requested a refund. The central issue in these

proceedings is what the reasonable charge the respondent is entitled to impose. Section 17(4) does not prescribe a mathematical formula for calculating a reasonable charge. It provides broad guidance by stating that a charge is unreasonable if it exceeds a fair amount having regard to the factors stated therein. We will consider these factors in turn.

*The nature of the goods or services that were reserved or booked*

18. It is common cause that the applicant booked a wedding venue for a promotional price of R80 000.00. The “wedding package” included plug points, a generator, chairs with cushions, a registration table, a honeymoon suite, waiters and barmen, crockery, cutlery, glassware, parking, a backup generator, gas heaters, bridal cars, a restaurant manager, a beverage manager, a wedding co-ordinator, braziers for the cocktail area, etc. The respondent submits that it is well-known that a wedding venue is generally booked one year in advance.

*The length of notice of cancellation provided by the consumer*

19. It is common cause that on 10 January 2023, the applicant cancelled the wedding planned for 19 February 2023. The respondent contends that this was very short notice and that it was impossible to get a replacement wedding “to the same value in such a short period due to the nature of the industry and the fact that it takes time and planning to have a successful wedding.”

*The reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation*

20. The respondent reiterated its contention that the applicant gave it very short notice and that it was impossible to get a replacement wedding “to the same value in such a short period due to the nature of the industry and the fact that it takes time and planning to have a successful wedding.”

*The general practice of the relevant industry*

21. The respondent contended that hosting a successful wedding requires time, planning, and staff. Consequently, the applicant is entitled to charge a reasonable cancellation fee.

## **CONCLUSION**

22. The applicant did not present evidence in rebuttal of the claims made by the respondent on the factors prescribed under section 17(4) of the CPA. Accordingly, in determining a reasonable cancellation fee, we recognise that the respondent lost revenue because of the applicant’s short cancellation notice. Given the facts of this case, we are of the opinion that the reasonable cancellation charge should not exceed 10% of the total amount the applicant paid the respondent.

**ORDER**

23. Having considered the evidence before us, we make the following order:

23.1. The respondent must pay R72 000.00 (Seventy-Two Thousand Rands) into the applicant's bank account within 30 ordinary days of the issuing of this judgment; and

23.2. There is no order as to costs.

Thus, dated and done on 9 July 2024.

[signed]

**Dr A Potwana**  
**Presiding Tribunal Member**

With Tribunal members Ms P Manzi-Ntshingila and Mr S Mbhele concurring.

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

**National Consumer Tribunal**

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