

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

Case Number: **NCT/223355/2022/57(1)**

In the matter between:

NATIONAL CREDIT REGULATOR

APPLICANT

and

**VIICO (PTY) LTD
TRADING AS FINANCIAL SERVICES CASH LOANS**

RESPONDENT

Coram:

Mr A Potwana - Presiding Tribunal member
Dr M Peenze - Tribunal member
Mr T Bailey - Tribunal member

Date of hearing: 3 June 2022

Last documents were filed on 10 June 2022.

JUDGEMENT AND REASONS

THE APPLICANT

1. The Applicant is the National Credit Regulator (“NCR”), a juristic person established in terms of section 12 of the National Credit Act 34 of 2005 (“NCA”) with offices situated at 127, 15th Road, Randjespark, Midrand, Gauteng.
2. At the hearing, Mr Mboniseni Mathivha (“Mr Mathiva”) and Ms Leanne Schwartz (“Ms Schwartz”), employees of the Applicant, represented the Applicant.

THE RESPONDENT

3. The Respondent is Viico (Pty) Ltd, trading as Financial Services Cash Loans. This private company was duly incorporated and registered in terms of the company laws of the Republic of South Africa and is a registered credit provider with its physical address at Shop No. 2, Pine Parkade, 260 Monty Naicker Road, Durban Central, Durban, 4000.
4. There was no appearance by the Respondent or its legal representatives at the hearing.

TYPE OF APPLICATION AND JURISDICTION

5. The Applicant referred a complaint to the Tribunal in terms of section 57(1) of the NCA.
6. In terms of Section 27(a)(i) of the National Credit Act 34 of 2005 (“NCA”), the Tribunal has jurisdiction.¹
7. Due to the coronavirus pandemic and the resultant physical distancing protocols, all the parties appeared via the Microsoft Teams audio and video technology link.

INTRODUCTION

8. On 13 March 2022, the Applicant filed an application against the Respondent in terms of section 57(1) of the NCA with the Tribunal’s Registrar (“Registrar”). The Applicant’s case is stated in its founding affidavit. The deponent is the Applicant’s Company Secretary, Mr Lesiba Mashapa (“Mr Mashapa”). According to Mr Mashapa, the Respondent has been registered with the Applicant since 15 June 2018 and remains so registered. Whilst attending the World Consumer Rights Week Conference in KwaZulu-Natal between 14 and 18 March 2022, the Applicant

¹ Section 27(a)(i) of the NCA provides that “*The Tribunal or a member of the Tribunal acting alone in accordance with this Act or the Consumer Protection Act, 2008 may adjudicate in relation to any application that may be made to it in terms of this Act in respect of such an application.*”

National Credit Regulator v Viico (Pty) Ltd trading as Financial Services Cash Loans received informal complaints in relation to credit providers “in the area” who were allegedly luring consumers who were receiving child care grants from the South African Social Security Agency (SASSA) to enter into credit agreements. Consequently, the Applicant carried out a “scouting exercise” during which numerous potential offending credit providers were identified, and anonymous queries were made.

9. When the Applicant’s “scout 1” anonymously made queries at the Respondent’s business premises, he or she was advised that the loan amounts were determined by the number of child care grants a consumer was receiving. The scouting exercise revealed several additional potential contraventions of the NCA by the Respondent, which gave rise to a reasonable suspicion that the Respondent was conducting its business and extending credit in a manner that was not in accordance with the provisions of the NCA or its Regulations. In view of the above, the Applicant initiated a complaint in terms of section 136(2) of the NCA on or about 19 February 2022 and authorised an investigation.
10. On 10 March 2022, the Applicant’s Chief Executive Officer appointed Kgadi Sepuru (“Sepuru”) and Tshildzi Mugwagwa (“Mugwagwa”) as inspectors in terms of section 25 of the NCA for purposes of investigating the Respondent’s activities. On or about 8 March 2022, the appointed inspectors interviewed the Respondent’s manager: Velile Gcaleka (“Gcaleka”) and advised him of the Respondent’s rights in terms of section 139(4) of the NCA. Gcaleka refused to sign the acknowledgement of rights form on her employer’s instructions. She, however, provided an overview and summary of the Respondent’s loan granting process. She stated that the Respondent offered loans to working consumers and consumers who are SASSA grant recipients but does not know how affordability assessments were conducted. The Applicant’s inspectors requested 10 randomly selected consumer files. Sepuru assessed the sampled files and authored a report with her findings. The Investigation Report is annexed to the Applicant’s founding affidavit.

11. The Applicant seeks an order declaring that the Respondent's conduct is prohibited, cancelling the Respondent's registration as a credit provider, interdicting the Respondent from further breaches of the NCA, imposing an administrative fine, and granting refunds and other remedial measures to any affected consumers. The Applicant alleges that the Respondent contravened the following provisions of the NCA:
 - 11.1. Section 81(2)(a)(iii) read with Regulation 23A of the NCA in that the Respondent failed to conduct credit bureau checks and assess consumer's debt repayment histories before entering into credit agreements;
 - 11.2. Section 81(3) read with section 80(1) in that the Respondent extended credit recklessly;
 - 11.3. Section 92(1) read with regulation 28(1) and Form 20: failure to provide a quotation and pre-agreement statements in the prescribed form;
 - 11.4. Section 93(1) and section 93(2) read with Regulation 30(1) and Form 20.2: failure to provide credit agreements in the prescribed form;
 - 11.5. Section 100(1)(b) and section 101(1)(c) read with Regulation 44: overcharging service fees;
 - 11.6. section 52(5)(e) read with section 170 and regulation 56: failure to keep records as required by the NCA; and
 - 11.7. Section 52(5)(c) and (f) read with Condition 3 of its General Conditions of Registration read further with Regulations 62(1)(c), 64(2) and 66: failure to keep statistical returns and annual financial returns.
12. Based on the above allegations, the seeks cancellation of the Respondent's registration as a credit provider, the imposition of a substantial administrative fine, interdictory relief and further direct relief for consumers. Concerning the administrative fine, the Applicant submitted that:
 - 12.1. The nature, duration, gravity and extent of the contraventions:
 - 12.1.1. Reckless lending is probably the most egregious contravention of the NCA because it leads to

National Credit Regulator v Viico (Pty) Ltd trading as Financial Services Cash Loans overindebtedness which can damage the entire credit industry and undermine the purpose of the NCA;

- 12.1.2. The Respondent's failure to adhere to the NCA indicates a disregard for the rights of consumers and the credit industry;
- 12.1.3. The conduct has been ongoing since long before the Applicant carried out its investigation;
- 12.1.4. The Respondent has repeatedly committed the egregious contraventions of the NCA;
- 12.2. Loss or damage suffered as a result of the contraventions:
 - 12.2.1. Consumers suffered losses or damage as a result of the Respondent's conduct;
 - 12.2.2. Consumers were charged exorbitant interest fees;
- 12.3. The behaviour of the Respondent:
 - 12.3.1. The Respondent deliberately disregarded the requirements of the NCA;
 - 12.3.2. The Respondent initially refused the inspectors entry into its premises even though they had identified themselves and stated the purpose of their visit;
- 12.4. Market circumstances under which the contraventions occurred:
 - 12.4.1. Consumers are uneducated about their rights relating to access to credit and, in some instances, are in an ongoing debt cycle;
 - 12.4.2. The Respondent's conduct has a negative impact on vulnerable consumers and consumers who have become reliant on debt;
 - 12.4.3. Affected consumers will find it most difficult to recover from exploitative conduct;
- 12.5. Level of profit derived from the contraventions:
 - 12.5.1. The Respondent derived a substantial profit;
 - 12.5.2. The overcharging of costs of credit indicates additional profits gained that the Respondent was not entitled to;

National Credit Regulator v Viico (Pty) Ltd trading as Financial Services Cash Loans
Degree of co-operation between the Respondent and Applicant:

12.6.

12.6.1. The Respondent did not co-operate with the Applicant during the investigation, as evidenced by its refusing the Applicant's inspectors entry into its premises and refusal to sign the section 139(4) acknowledgement of rights;

12.7. Prior contraventions committed by the Respondent:

12.7.1. There are no prior enforcement actions instituted by the Applicant against the Respondent; and

12.7.2. The nature of the contraventions indicates that the Respondent's conduct has been ongoing since the Respondent's registration as a credit provider.

13. In light of the Respondent's repeated contraventions of the NCA and its regulations, the Applicant prays that the Tribunal makes an order in the following terms:

13.1. Declaring the Respondent to have repeatedly contravened:

13.1.1. Section 81(2)(a)(ii) and (iii) of the NCA read with Regulation 23A of the NCA Regulations;

13.1.2. Section 81(3) read with section 80(1) of the NCA;

13.1.3. Alternatively to 13.1 and 13.2 above, section 52(5)(e) read with section 170 of the NCA and regulation 55(1)(b)(vi) of the NCA Regulations;

13.1.4. Section 92(1) of the NCA read with regulation 28(1) and Form 20 in Schedule 1 as well as Regulation 23A(15)(a) and (d) of the NCA Regulations;

13.1.5. Sections 93(1) and 93(2) of the NCA read with Regulation 30(1) and Form 20.2 of the NCA Regulations;

13.1.6. Section 100(1)(b) and section 101(1)(c) of the NCA read with Regulation 44 of the NCA;

13.1.7. Section 52(5)(c) and (f) of the NCA read with General Condition 3 of its General Conditions of Registration read

National Credit Regulator v Viico (Pty) Ltd trading as Financial Services Cash Loans further with Regulations 62(1)(b) and (c), read further with Regulations 64(2) and 66 of the NCA Regulations;

- 13.2. Declaring the Respondent's conduct in contravening the relevant sections of the NCA and its regulations and its conditions of registration as listed above prohibited conduct in terms of section 150(a) of the NCA;
- 13.3. Cancelling the Respondent's registration as a credit provider in terms of section 57 of the NCA;
- 13.4. Declaring the agreements annexed to the Investigation Report marked as annexures "F1" to "F10" as reckless in terms of section 80(1)(a) of the NCA;
- 13.5. Setting aside all of the consumers' obligations under the agreements annexed to the Investigation Report marked as annexures "F1" to "F10";
- 13.5.1. Ordering the Respondent to, at its own costs:
 - 13.5.1.1. Refund all the costs of credit charged and recovered from consumers under the agreements annexed to the Investigation Report marked as annexures "F1" to "F10";
 - 13.5.1.2. refrain from taking any enforcement action against consumers under the agreements annexed to the Investigation Report marked as annexures "F1" to "F10" and, to the extent that the Respondent may already have taken enforcement action which is pending against any such consumers, the Respondent shall formally withdraw such action, and tender payment of the consumer's legal costs where the action is defended or opposed;
 - 13.5.1.3. take all such steps as may be necessary in order to ensure that:
 - 13.5.1.3.1. any adverse credit bureau listings which may have arisen as a result of the consumers having concluded such credit agreements with the Respondent are removed;

13.5.1.3.2. any civil judgements taken by the Respondent against such consumers in respect of such agreements are rescinded or, if rescission is not possible, such judgements to be abandoned;

13.6. Ordering the Respondent to:

13.6.1. Within 30 days, appoint an independent auditor at its own costs and subject to the prior written approval of the Applicant to identify all credit agreements concluded by the Respondent in the past three (3) years to determine if any consumers were overcharged on costs of credit and provide a list of such consumers as well as the amount by which each consumer was overcharged;

13.6.2. Once the Auditor has compiled the report, the Respondent will, within thirty (30) days from the date of the Auditor's report:

13.6.2.1. Refund the consumers all amounts which exceeded the prescribed maximum amounts allowed by the NCA;

13.6.2.2. refrain from taking any enforcement action against such consumers and, to the extent that the Respondent may already have taken enforcement action which is pending against any such consumers, the Respondent shall formally withdraw such action and tender payment of the consumer's legal costs where the action is defended or opposed;

13.6.2.3. take all such steps as may be necessary in order to ensure that any adverse credit bureau listings which may have arisen as a result of the consumer having concluded such credit

Judgement and Reasons:

Case Number: NCT/223355/2022/57(1)

National Credit Regulator v Viico (Pty) Ltd trading as Financial Services Cash Loans
agreements with the Respondent are removed;

- 13.6.2.4. take all such steps as may be necessary in order ensure that any civil judgements taken by the Respondent against such consumers in respect of such agreements are rescinded or if rescission is not possible, such judgements to be abandoned;
- 13.6.3. Once the refunds have been made, the Respondent must provide an auditor's report together with a written report to the Applicant detailing the identity of the consumers, the refunds made and the further steps taken within 120 days after the Tribunal order has been obtained;
- 13.7. The appointed Auditor must identify all credit agreements which the Respondent entered into without properly conducting assessments in terms of section 81(2)(a)(ii) and (iii) and, once so identified, the Applicant is authorised to approach the Tribunal on these same papers(duly supplemented where necessary) for an order:
 - 13.7.1. Declaring those agreements reckless;
 - 13.7.2. Setting aside all the consumers' obligations under those agreements;
 - 13.7.3. Ordering the Respondent, at its own cost, to:
 - 13.7.3.1. Refund all the costs of credit charged and recovered from consumers under all such agreements;
 - 13.7.3.2. refrain from taking any enforcement action against such consumers and, to the extent that the Respondent may already have taken enforcement action which is pending against any such consumers, the Respondent shall formally withdraw such action and tender payment of the consumer's legal costs where the action is defended or opposed;

13.7.3.3. take all such steps as may be necessary in order

to ensure that:

13.7.3.3.1. any adverse credit bureau listings which may have arisen as a result of the consumer having concluded such credit agreements with the Respondent are removed;

13.7.3.3.2. any civil judgements taken by the Respondent against such consumers in respect of such agreements, are rescinded or, if rescission is not possible, such judgements to be abandoned; and

13.7.3.3.3. take all such steps as may be necessary in order to ensure that any adverse credit bureau listings which may have arisen as a result of the consumer having concluded such credit agreements with the Respondent are removed; and any civil judgements taken by the Respondent against such consumers in respect of such agreements, are rescinded or, if rescission is not possible, such judgements to be abandoned;

13.8. The imposition of an administrative fine on the Respondent in the amount of R1 000 000.00 (One Million Rand) or 10% of the Respondent's annual turnover, whichever is greater;

13.9. In terms of section 150(i) of the NCA, any other appropriate order required to give effect to consumers' rights in terms of the NCA; and

13.10. Further or alternative relief.

14. On 1 April 2022, the Registrar issued a notice of Filing and served it on the parties. On 10 May 2022, Registrar issued a Notice Set-Down for the application to be heard on 3 June 2022 and served it on the Applicant by email and the Respondent by registered mail.

THE LAW

15. Rule 13(1) of the Tribunal Rules states:

“Any Respondent to an application or referral to the Tribunal may oppose the application or referral by serving an answering affidavit on:

- (a) the Applicant; and*
- (b) every other person on whom the application was served.”*

16. Rule 13(2) of the Tribunal Rules states that *“An answering affidavit to an application or a referral other than an application for interim relief must be served on the parties and filed with the Registrar within 15 business days of receipt by such party of the application.”*

17. Rule 13(5) of the Tribunal Rules states that *“Any fact or allegation in the application or referral not specifically denied or admitted in an answering affidavit will be deemed to have been admitted.”*

18. Rule 25(3) of the Tribunal Rules states-

“The Tribunal may make a default order –

- (a) after it has considered or heard any necessary evidence; and*
- (b) if it is satisfied that the application documents were adequately served.”*

19. Rule 30(1) of the Tribunal Rules states –

“A document may be served on a party by-

- (a) delivering it to the party; or*

HEARING OF THE MATTER ON A DEFAULT BASIS

20. Notwithstanding the service of the application documents on the Respondent, the Respondent did not file any answering affidavit as provided for under rules 13(1) and (2) of the Tribunal Rules. On the day of the hearing, the Tribunal panel was satisfied that the application documents and the Notice of Set Down were adequately served on the Respondent. The hearing of the application proceeded on a default basis.

ISSUES TO BE DECIDED

21. The Tribunal is required to determine whether the Respondent contravened the provisions of the NCA as alleged by the Applicant and whether the relief sought by the Applicant should be granted.

ANALYSIS OF THE EVIDENCE AND REASONS FOR JUDGEMENT

22. In terms of rule 13(5) of the Tribunal Rules, all the facts or allegations made by the Applicant are deemed to have been admitted. It is apparent from the investigation report that:

22.1. The Respondent overcharged several consumers the service and initiation fees;

22.2. The Respondent failed to provide pre-agreement quotations and statements in the prescribed form;

22.3. No documentation shows that the Respondent considered the consumers' debt repayment histories, existing financial means, prospects and obligations in all of the samples;

22.4. The Respondent failed to conduct the assessments required by section 81(2); and

22.5. Documents that recorded small credit agreements were not in the prescribed form.

CONCLUSION

23. The evidence presented to the Tribunal shows that the Respondent contravened several sections of the NCA as alleged by the Applicant. In the absence of any evidence to the contrary, the various orders sought by the Applicant may be granted. However, the Tribunal cannot grant the order that once an independent auditor has compiled a report identifying all credit agreements concluded by the Respondent in the past three (3) years to determine if any consumers were overcharged on costs of credit and provide a list of such consumers as well as the amount by which each consumer was overcharged to the Applicant; the Respondent will, within thirty (30) days from the date of the Auditor's report:
- 23.1. Refund the consumers all amounts which exceeded the prescribed maximum amounts allowed by the NCA;
 - 23.2. refrain from taking any enforcement action against such consumers and, to the extent that the Respondent may already have taken enforcement action which is pending against any such consumers, the Respondent shall formally withdraw such action and tender payment of the consumer's legal costs where the action is defended or opposed;
 - 23.3. take all such steps as may be necessary in order to ensure that any adverse credit bureau listings which may have arisen as a result of the consumer having concluded such credit agreements with the Respondent are removed;
 - 23.4. take all such steps as may be necessary in order to ensure that any civil judgements taken by the Respondent against such consumers in respect of such agreements are rescinded or if rescission is not possible, such judgements to be abandoned;
 - 23.5. Once the refunds have been made, the Respondent must provide an auditor's report together with a written report to the Applicant detailing the identity of the consumers, the refunds made and the further steps taken within 120 days after the Tribunal order has been obtained.

24. The reason for refusing to grant the order stated immediately above is that the proposed process cannot happen without judicial oversight. The independent Auditor can express an opinion that the Respondent overcharged on costs of credit as well as the amount by which each consumer was overcharged. But, unlike the Tribunal, they would lack the jurisdiction to make a judicial finding or a binding legal order. Without a legal order, an independent auditor's opinion would not be enforceable as an order of the Tribunal which can be served, executed and enforced as if it were an order of the High Court.

25. In addition to the above, there is no legal basis for the Tribunal to grant the Applicant's prayer that once the appointed Auditor has identified all credit agreements which the Respondent entered into without properly conducting assessments in terms of section 81(2)(a)(ii) and (iii), the Applicant must be authorised to approach the Tribunal on the same papers filed in this matter, duly supplemented where necessary, for an order:
 - 25.1. Declaring those agreements reckless;
 - 25.1.1. Setting aside all the consumers' obligations under those agreements;
 - 25.1.2. Ordering the Respondent, at its own cost, to:
 - 25.1.2.1. Refund all the costs of credit charged and recovered from consumers under all such agreements;
 - 25.1.2.2. refrain from taking any enforcement action against such consumers and, to the extent that the Respondent may already have taken enforcement action which is pending against any such consumers, the Respondent shall formally withdraw such action and tender payment of the consumer's legal costs where the action is defended or opposed;

25.1.2.3. take all such steps as may be necessary in order

to ensure that:

25.1.2.3.1. any adverse credit bureau listings which may have arisen as a result of the consumer having concluded such credit agreements with the Respondent are removed;

25.1.2.3.2. any civil judgements taken by the Respondent against such consumers in respect of such agreements are rescinded or, if rescission is not possible, such judgements to be abandoned;

25.1.2.3.3. take all such steps as may be necessary in order to ensure that any adverse credit bureau listings which may have arisen as a result of the consumer having concluded such credit agreements with the Respondent are removed; and any civil judgements taken by the Respondent against such consumers in respect of such agreements, are rescinded or, if rescission is not possible, such judgements to be abandoned;

26. In terms of section 140(1)(b) of the NCA, the Applicant is empowered to refer matters to the Tribunal “*after completing an investigation into a complaint*” and if it “*believes that a person has engaged in prohibited conduct.*” It follows that the Applicant cannot refer a matter to the Tribunal without having initiated a complaint,

National Credit Regulator v Viico (Pty) Ltd trading as Financial Services Cash Loans completed an investigation of that complaint and forming a belief that a person has engaged in prohibited conduct. If the Applicant complies with the provisions of section 140(1)(b) of the NCA, it does not need to be authorised by the Tribunal to refer allegations of prohibited conduct to the Tribunal. The manner by which the Applicant may refer matters to the Tribunal is prescribed in the Tribunal Rules.

ORDER

27. The Tribunal makes the following order:

27.1. The Respondent is found guilty of repeatedly contravening the following sections of the NCA:

27.1.1. Section 81(2)(a)(ii) and (iii) read with Regulation 23A of the NCA Regulations;

27.1.2. Section 81(3) read with section 80(1);

27.1.3. Alternatively to a) and b) above, section 52(5)(e) read with section 170 of the NCA and Regulation 55(1)(b)(vi) of the NCA Regulations;

27.1.4. 92(1) read with Regulation 28(1) and Form 20 as well as Regulation 23A(15)(a) and (d) of the NCA Regulations;

27.1.5. 93(1) and 93(2) read with Regulation 30(1) and Form 20.2 of the NCA Regulations;

27.1.6. Section 100(1)(b) and section 101(1)(c) read with Regulation 44 of the NCA;

27.1.7. section 52(5)(c) and (f) read with General Condition 3 of its General Conditions of Registration read further with Regulations 62(1)(b) and (c), read further with 64(2) and 66 of the NCA Regulations;

27.2. The Respondent's conduct in contravening the relevant sections of the NCA and its regulations and its conditions of registration as listed above constitutes prohibited conduct in terms of section 150(a) of the NCA;

27.3. The Respondent's registration as a credit provider is cancelled in terms of section 57 of the NCA;

- 27.4. The credit agreements annexed to the Investigation Report marked as annexures “F1” to “F10” are declared reckless in terms of section 80(1) (a) of the NCA;
- 27.5. The consumers’ obligations under the credit agreements annexed to the Investigation Report marked as annexures “F1” to “F10” are set aside;
- 27.6. The Respondent must:
- 27.6.1. Refund all the costs of credit charged and recovered from consumers whose names appear in annexures “F1” to “F10” of the Applicant’s Investigation Report;
 - 27.6.2. refrain from taking any enforcement action against consumers whose names appear in annexures “F1” to “F10” of the Applicant’s Investigation Report and, to the extent that the Respondent may already have taken enforcement action which is pending against any such consumers, the Respondent shall formally withdraw such action, and tender payment of the consumer’s legal costs where the action is defended or opposed;
 - 27.6.3. take all such steps as may be necessary to ensure that:
 - 27.6.3.1. any adverse credit bureau listings which may have arisen as a result of consumers whose names appear in annexures “F1” to “F10” of the Applicant’s Investigation Report having concluded credit agreements with the Respondent are removed;
 - 27.6.3.2. any civil judgements taken by the Respondent against consumers whose names appear in annexures “F1” to “F10” of the Applicant’s Investigation Report are rescinded or, if rescission is not possible, such judgements to be abandoned;
- 27.7. Within 30 days, the Respondent must appoint an independent auditor at

Judgement and Reasons:

Case Number: NCT/223355/2022/57(1)

National Credit Regulator v Viico (Pty) Ltd trading as Financial Services Cash Loans
its own costs and subject to the prior written approval of the Applicant to
identify all credit agreements concluded by the Respondent in the past

National Credit Regulator v Viico (Pty) Ltd trading as Financial Services Cash Loans three (3) years to determine if any consumers were overcharged on costs of credit and provide a list of such consumers as well as the amount by which each consumer was overcharged to the Applicant within 120 days of the issuing of this order;

27.8. The appointed Auditor must identify all credit agreements which the Respondent entered into without properly conducting assessments in terms of section 81(2)(a)(ii) and (iii) and present such credit agreements to the Applicant within 120 days of the issuing of this order;

27.9. Within 90 business days of the date of issue of this judgment and order, the Respondent must pay an administrative fine in the amount of R100 000.00 (One Hundred Thousand Rand) into the following National Revenue Fund's bank account:

Bank name: The Standard Bank of South Africa

Account holder: Department of Trade and Industry

Branch name: Sunnyside

Branch code: 05100

Account number: 317 650 026

Reference: NCT/223350/2022/57(1) and name of person or business making the payment; and

27.10. There is no order made as to costs.

Thus, done and signed on this the 21st day of June 2022.

Mr A Potwana

Presiding Tribunal Member

Dr M Peenze (Tribunal member) and Mr T Bailey (Tribunal member) concur.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

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Lakefield Office Park

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