

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

Case Number: **NCT/252886/2022/149**

In the matter between:

ZELDA BISSCHOFF

APPLICANT

and

MCINTYRE VAN DER POST INCORPORATED

RESPONDENT

Coram:

Dr MC Peenze - Presiding Tribunal member

Mr CJ Ntsoane - Tribunal member

Ms Z Ntuli - Tribunal member

Date of hearing: 16 January 2023

JUDGMENT

APPLICANT

1. The Applicant in this matter is Zelda Bisschoff, a consumer in Bloemfontein, Free State ("the Applicant").
2. At the hearing, the Applicant represented herself.

RESPONDENT

3. The Respondent is McIntyre van der Post Incorporated, a law firm situated in Bloemfontein, Free State (“the Respondent”).
4. At the hearing, the Respondent was represented by Mr Leon van Vuuren, an attorney at McIntyre van der Post Incorporated.

APPLICATION TYPE

5. This is an application for interim relief in terms of section 114 of the Consumer Protection Act 68 of 2008 (“the Act”) whereby the Applicant applies for an interim order in the following terms:

“Interdicting the Respondent from setting down any matter before the courts relating to the merits of the complaints before the Tribunal, pending the referral hearing into the Applicant’s complaints.”

6. The Applicant indicates that she has applied for interim relief because serious irreparable damage may result to the Applicant if the Respondent continues with its debt collection process in the Magistrate’s Court.
7. A hearing was held on 16 January 2023 via the MS Teams electronic meeting platform, at which the parties made submissions.

BACKGROUND

8. The Applicant filed a fee dispute with the Legal Practice Council, Free State (“the LPC”) on 02 April 2019. The LPC ruled on the fee dispute on 30 September 2022.
9. The Respondent initiated a debt collection process in the Magistrate’s Court in Bloemfontein on 12 March 2020. This matter is pending.
10. On 26 February 2022, the Applicant referred a complaint to the National Consumer Commission (“the NCC”). On 30 September 2022, the NCC issued a notice of non-referral.

11. On 10 October 2022, the Applicant filed an application for leave to refer directly to the National Consumer Tribunal (“the Tribunal”). On 11 November 2022, the Respondent filed a condonation application for the late filing of its answering affidavit.
12. On the date of the hearing of this application for interim relief, the condonation application still needed to be adjudicated, and the leave to refer application had yet to be considered.
13. The Applicant alleges that the Respondent invoiced her for unsolicited services and approached the court with a debt collection process in contravention of various provisions of the CPA. In the main matter that the Applicant intends to bring to the Tribunal, the Applicant requests the Tribunal to decide on the merits of her complaints before the Tribunal, namely:
 - 13.1. Whether the legal services, as invoiced, are solicited and payable; and
 - 13.2. Whether Respondent’s action to approach the Court with a debt collection claim, while the claim was allegedly under dispute resolution, constitutes prohibited conduct.
14. The Respondent opposes the application for interim relief and submits that the urgent relief requested by the Applicant is not justified in law.
15. The Respondent further submits that the Applicant will have the opportunity to argue any contravention of the Act as a defence in the matter presently before the Magistrate’s Court. In response, the Applicant believes that only the Tribunal may issue a ruling of prohibited conduct and the Magistrates Court cannot consider such an application. Irrespective, the parties agreed that the subject matter in both the Magistrate’s Court and this matter before the Tribunal relates to the dispute on legal fees.

JURISDICTION

16. Whether parties in a matter before the Tribunal raised the issue of jurisdiction or not, it remains the responsibility of the Tribunal to *mero motu* ensure that it only entertains matters for which jurisdiction had been assigned in the appropriate legislation.

17. Jurisdiction to adjudicate on an application for interim relief will be apparent if the requirements for interim relief as laid down in Section 114(1) of the Act are found to exist.
18. In addition to its other powers in terms of the Act, section 114(1) gives the Tribunal the power to grant interim relief in terms of the Act.
19. Section 114(1) of the Act provides that:
*“A person who has applied for relief to a court, or the complainant in a complaint **that has been referred to the Tribunal** (emphasis added), may apply to a court subject to its rules, or to the Tribunal, as the case may be, for an interim order in respect of that application or complaint, and the court or Tribunal may grant such an order if—*
a) *there is evidence that the allegations may be true;*
b) *an interim order is reasonably necessary to –*
i. *prevent serious, irreparable damage to that person; or*
ii. *to prevent the purposes of this Act being frustrated;*
c) *the Respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and*
d) *the balance of convenience favours the granting of the order”.*
.
20. Section 1 of the Act states that:
“a complainant means (a) a person who has filed a complaint with the Commission in terms of section 71; ...”
21. Section 71 (1) of the Act states that
“Any person (emphasis added) may file a complaint concerning a matter contemplated in section 69(c)(iv) with the Commission in the prescribed manner and form, alleging that a person has acted in a manner inconsistent with this Act”.
22. According to the evidence before the Tribunal, the Applicant’s complaint is not yet referred to the Tribunal. The status of the complaint is that of “non-referred” by the NCC. A complaint in terms of the Act can only be referred to the Tribunal by the NCC or by the complaint **with leave of the Tribunal**. The mere filing of an application for leave to refer directly to the Tribunal does not constitute

a referral in law to the Tribunal. Until the Tribunal had issued a ruling granting the leave to refer, the status of the Applicant's complaint remains non-referred.

23. Section 114(1) intends to grant the Tribunal the jurisdiction to grant interim relief relating to a complaint **in a matter referred to the Tribunal**. As the Applicant's complaint has not yet been referred to the Tribunal, the application for interim relief does not meet the requirements of section 114(1) of the Act. Consequently, the Applicant does not have the requisite locus standi to make the application for interim relief, and the application must fail.

FINDING

24. Having considered the parties' submissions and the evidence before the Tribunal, the Tribunal finds that it does not have jurisdiction in this application, as the Applicant's complaint is not yet referred to the Tribunal. The application for interim relief consequently fails. Having considered the jurisdiction of the Tribunal in this application, the merits of the matter become irrelevant.
25. Nothing precludes the Applicant from pursuing relief in the appropriate legal forum and awaiting the Tribunal's ruling on the leave-to-refer application.

ORDER

26. Accordingly, the Tribunal makes the following order –
- 26.1. The Applicant's application for interim relief in terms of section 114 is dismissed; and
- 26.2. There is no cost order.

THUS, DONE IN CENTURION ON THIS 17TH DAY OF JANUARY 2023.

[signed]

Dr MC Peenze

Presiding Tribunal Member

Mr CJ Ntsoane (Tribunal Member) and Ms Z Ntuli (Tribunal Member) concur.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

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