THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF A JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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National Credit Regulator v First Group Investment Holdings (Pty) Ltd and Another (475/2024) [2026] ZASCA 67 (11 May 2026)

The Supreme Court of Appeal (SCA) today upheld an appeal by the National Credit Regulator (the Regulator) against an order of the Gauteng Division of the High Court, Pretoria (the High Court), which had upheld an appeal by First Group Investment Holdings (Pty) Ltd (First Group) against a ruling of the National Consumer Tribunal (the Tribunal) dismissing five preliminary defences raised by First Group.

The Regulator had referred a complaint against First Group to the Tribunal in terms of s 140(1)*(b)* read with s 140(2)*(b)* of the National Credit Act 34 of 2005 (the NCA), alleging that First Group, a credit provider operating a holiday-time sharing scheme, had engaged in prohibited conduct. The alleged contraventions included a failure to conduct proper affordability assessments, levying costs of credit in excess of the prescribed maximum, and the imposition of unlawful fees. First Group raised five points in limine before the Tribunal, contending, in essence, that the referral was not authorised, that the investigation report

constituted inadmissible hearsay, that the Regulator lacked a reasonable suspicion to initiate the investigation, that the investigator had exceeded the scope of the authorised investigation, and that the investigator's report was materially incomplete and defective. The Tribunal dismissed all five defences. On appeal under s 148(2)*(b)* of the NCA, the High Court reversed the Tribunal and dismissed the Regulator's referral in its entirety.

In a majority judgment penned by Matojane JA (Mokgohloa and Kathree-Setiloane JJA concurring), the SCA held that the Tribunal's order dismissing the five points in limine was not a 'decision of the Tribunal in that matter' as contemplated in s 148(2)*(b)* of the NCA. It was an interlocutory ruling not susceptible to appeal under that subsection. The majority emphasised that the text of s 148(2)*(b),* read with the inquisitorial, expeditious and informal scheme of the NCA prescribed by ss 3 and 142(1), confines the right of appeal to the Tribunal's substantive disposition of a referral, and not to every ruling made in the course of those proceedings. The majority found this Court's earlier judgment in *Lewis v Summit Financial Partners* 2018 (3) SA 467 (SCA) to be the authoritative pronouncement on the construction of s 148, holding that the principle there enunciated, that piecemeal appellate interference with Tribunal proceedings is to be avoided, applies with equal force whether the procedure before the Tribunal is formal or informal. The majority distinguished *Ganes v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) (*Ganes*) and *National Credit Regulator v Dacqup Finances CC and Another* 2024 (1) SA 89 (SCA) (*Dacqup*) on the basis that the appealability question was not engaged in *Ganes* and was conceded, without adjudication, in *Dacqup*, with the result that neither generates a binding ratio on the question. The majority further held that the dilatory-declinatory classification relied upon in the minority judgment is not decisive for purposes of s 148(2*)(b)*, which turns on whether the ruling constitutes a 'decision' within the meaning of that subsection.

The majority observed that the merits hearing before the Tribunal had been suspended for more than three years as a result of interlocutory proceedings, an outcome that a purposive construction of s 148(2)*(b)* is designed to prevent. The High Court accordingly had no jurisdiction to entertain the appeal and ought to have struck it from the roll. The SCA upheld the appeal with no order as to costs, set aside the order of the High Court, and replaced it with an order striking the appeal before the High Court from the roll. First Group's preliminary defences, to the extent necessary, will be dealt with by the Tribunal at the hearing of the merits of the referral, in the exercise of its powers under ss 142 and 145 of the NCA.

In the minority judgment, Makgoka JA (with Goosen JA concurring) clarified the nature of the proceedings before the Tribunal as being of an informal and inquisitorial nature, unbound by the formal approach adopted by courts in motion proceedings. On the question of appealability, the minority would have held that the Tribunal's order possessed the three attributes identified in *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A), being final in effect, definitive of the rights of the parties, and dispositive of the defences raised, and that, in any event, the interests of justice favoured appealability in light of *UDM v Lebashe Investment Group (Pty) Ltd* 2023 (1) SA 355 (CC). The minority would have held that this Court was bound by *Ganes* and *Dacqup* on the principle of horizontal stare decisis as articulated in *Camps Bay Ratepayers' and Residents' Association v Harrison* 2011 (4) SA 42 (CC), and would have considered the merits of First Group's defences. On the merits, the minority would have found that the High Court adopted an impermissibly formalistic approach to the proceedings before the Tribunal, contrary to the inquisitorial and informal character prescribed by ss 142(1) and 145 of the NCA.

The minority would have substituted an order amending the Tribunal's order to provisionally admit the investigation report pending the hearing of the merits, with the second, fourth and fifth points in limine to be determined together with the merits before a differently constituted Tribunal, and would have upheld the appeal with costs, including the costs of two counsel.

ENDS