



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

THE NATIONAL CREDIT REGULATOR v GETBUCKS (PTY) LTD AND ANOTHER (Case no 140/2020) [2021] ZASCA 28

Today the Supreme Court of Appeal dismissed an appeal from the Gauteng Division of the High Court, Pretoria (per Davis J). The National Credit Regulator (the NCR) sought to invoke Regulation 44 (the regulation) promulgated under the National Credit Act 34 of 2005 (the Act) against Getbucks (Pty) Ltd (Getbucks). The regulation prescribes maximum monthly service fees which the NCR claimed had been exceeded by Getbucks. The NCR accordingly approached the National Credit Tribunal (the Tribunal) for the deregistration of Getbucks as a credit provider under the Act. Getbucks applied to the court of first instance to bar the NCR from doing so on the basis that the regulation had not been validly promulgated.

The regulation was one of a comprehensive set of regulations designed to give effect to the provisions of the Act. Without the regulations, there would have been a lacunae in the administration of matters concerning credit. The primary issue was whether the regulation had been promulgated under s 171 of the Act or under s 11 of Schedule 3 to the Act, dealing with interim arrangements. If under the former, the proposed regulation had to be published and comment from interested and affected

parties called for, but without specifying any period for the submission of comments. If under s 11 of Schedule 3 to the Act, a period of 30 business days had to be allowed for comments to be submitted. The advertisement specified that comments should be submitted by a particular date which was only 27 business days from the date of publication of the draft regulations.

The Supreme Court of Appeal held that the regulation could not have been promulgated under s 171. The NCR only came into existence on the date on which the Act and regulation came into effect. Section 105(1) of the Act required the Minister to consult with the NCR prior to promulgation of regulations dealing with matters concerning minimum monthly service fees. Since there could have been no prior consultation with a non-existent body, the provisions of s 105(1) were not complied with. Only s 11 of Schedule 3 allowed for non-compliance with procedural aspects of the Act. It was thus the only basis on which the Minister could have promulgated the regulation. Because s 11 required a 30 day period for comment and this had not been allowed, the Minister had not been empowered to promulgate the regulation and the NCR was barred from invoking it against Getbucks. The short period could not be condoned because the power to promulgate only arose under s 11 once the 30 business day period had elapsed.

For these reasons, the appeal was dismissed with costs.