IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	**REPORTABLE: N**
(2)	OF INTEREST TO OTHER JUDGES: N
(3)	REVISED: Y
(4)	Signature: [redacted] Date: 18/02/26

CASE NO.:A46/2025

In the matter between:

CELL C LTD Applicant

and

JULIA WILLIAMS First Respondent

NATIONAL CONSUMER TRIBUNAL Second Respondent

JUDGMENT

Kumalo J (with Francis-Subbiah J concurring)

INTRODUCTION

[1]. This is an appeal brought in terms of section 148(2)(b) of the National Credit Act, 34 of 2005 (the "NCA"), against the order of the National Consumer Tribunal ("NCT"), the Second Respondent in the matter.

[2]. The NCT made findings that the Appellant contravened the provisions of sections 4(5)(b), 54(1)(b), 51(1)(b)(i), (ii), and (iii) and 48(1)(a)(i)(ii) and (c)(iii) of the Consumer Protection Act, 68 of 2008 (the CPA") and declared the contraventions prohibited conduct in terms of section 150(a) of the CPA.

[3]. The Appellant was ordered to refund the First Respondent the amount of R7 480.32, the amount alleged that the Appellant charged over the limit on her account, and an interdict was granted restraining the Appellant from engaging in similar prohibited conduct in the future.

[4]. Further, the Appellant was issued with an administrative fine in the amount of R500 000.00 payable within thirty days of the judgment and to pay the First Respondent's legal costs on the Magistrate's Court party and party scale.

[5]. The Appellant appeals against this decision on various grounds, which this court does not intend to regurgitate herein. The First Respondent also filed a cross-appeal against the Magistrate's Costs order and submitted that it ought to have been granted a cost order based on the High Court scale.

[6]. The facts of this case are almost common cause. On 4 May 2022, the First Respondent contacted the Appellant's call centre by telephone on four occasions and spoke with four different operators.

[7]. She confirmed to the operators that she had already visited the Appellant's website to familiarise herself with the roaming charges applicable to her intended destinations. She referred to three distinct rates applicable to different geographic areas or foreign networks. She confirmed during the process that she was aware that data roaming rates could be high.

[8]. The purpose of the First Respondent's calls was to activate international roaming services as she was to travel overseas on that very day. She had asked the first operator to increase her monthly billing limit so that she could make a call if necessary while abroad. This couldn't be achieved with the first operator because the call was accidentally dropped.

[9]. This could not have been achieved through the second operator, as the First Respondent failed the security verification process. The third operator transferred her call to the contracts department, which was her fourth and final call.

[10]. The fourth operator advised the First Respondent that, before Appellant could activate the roaming services, she was required to read the terms and conditions that would apply to her. She responded by insisting that there was no need to read her the terms and conditions, as she had already heard them during the previous call, and that the operator could "*just wrap them.*"

[11]. However, the operator read the terms and conditions to her. She explained that if she failed to do so, she would be reprimanded. The First Respondent chose to increase her monthly limit to R3 785.00.

[12]. The Second Respondent is enjoined by the CPA to interpret any standard form, contract, or other document prepared or published by or on behalf of a supplier to the benefit of the consumer so that any ambiguity that allows for more than one reasonable interpretation of a part of such document is resolved in favour of the consumer.

[13]. Section 4(5)(b) of the CPA provides that in any dealings with a consumer in the ordinary course of business, a person must not engage in any conduct that is unconscionable, misleading, or deceptive, or reasonably likely to mislead or deceive a consumer.

[14]. Section 48(1)(a)(i), (ii), and (iii) of the CPA prohibit a supplier from offering to supply or enter into an agreement to supply any goods or services at a price that is unfair, unreasonable, or unjust or on terms that are unfair, unreasonable, or unjust. The supplier must not further require a consumer to waive any supplier liability.

[15]. Section 51(1)(b)(i), (ii), and (iii)of the CPA prohibit a transaction or agreement subject to any term or condition if it directly or indirectly purports to waive or deprive a consumer of a right in terms of the Act or avoid a supplier's obligation or duty in terms of the CPA. In short, the transaction may not be subject to a term or condition that purports to set aside or override the effect of any provision of the Act.

[16]. Section 54(1)(b) of the CPA relates to the right of the consumer to the performance of the services in a manner and quality that persons are generally entitled to.

[17]. In this case, the First Respondent conceded and submitted that the terms and conditions of the Appellant for the services she required were read to her, but she did not assent to them.

[18]. This court finds the above statement that she did not assent difficult to accept. The evidence that is common cause between the parties suggests otherwise.

[19]. The First Respondent confirmed to various operators that she was aware of the terms and conditions. She was aware of the tariffs and had complained that they were expensive. The conversation she had with Ms. Twala, one of the operators she spoke with, clearly indicates that she was forewarned and advised to use alternatives to the roaming facility, but she elected to use international roaming.

[20]. The above in my view supports the conclusion that she assented and cannot be heard to state that she did not.

[21]. The whole saga that subsequently followed and led to the orders made by the Second Respondent is dependent on the interpretation of clause 2 of the Appellant's terms and conditions. Perhaps it is apposite to quote the same in full:

"***ACCOUNT LIMITS AND THRESHOLDS***

Please note that thresholds and monthly usage limits apply to international roaming. However, there may be delays when imposing the limits due to delays in billing records being received from foreign networks. Cell C also cannot guarantee the accuracy of the limits set or

that such limits will be set timeously, due to the delays from foreign networks. There may be up to a three (3) month delay in call, SMS, and data charges reflecting on your statement due to the downloading of call data records (CDR's) from foreign networks."

[22]. The above formed part of the short code of terms and conditions governing international roaming. Whilst clause 2 confirms that thresholds and monthly usage limits apply to international roaming, it clearly sets out the associated risks. The First Respondent accepted the same, fully aware of the risks, despite being advised to use alternatives.

[23]. To further compound matters, she was not prepared to have the operator read the terms and conditions to her, alleging that the other operators had already read them to her.

[24]. That is not the conduct of a person who did not assent to the conditions. What she raised then was the issue of the rates, which led to an increase in her limit by a further R2000.00.

[25]. It is apposite at this juncture to revisit the purpose of the Consumer Protection Act, 68 of 2008 in question and the relevant sections alleged to have been contravened by the Appellant.

[26]. The purposes of the Consumer Protection Act are to promote and advance the social and economic welfare of consumers in South Africa by— (a) establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable, and responsible for the benefit of consumers generally.

[27]. Further, to promote fair business practices; protecting consumers from— (i) unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and (ii) deceptive, misleading, unfair or fraudulent conduct; improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour; promoting consumer confidence, empowerment, and the development of a culture of consumer responsibility, through individual and group education, vigilance, advocacy and activism; providing for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions; and providing for an accessible, consistent, harmonised, effective and efficient system of redress for consumers.

[28]. Section 4(5)(b) of the CPA provides:

> "In any dealings with a consumer in the ordinary course of business, a person must not—
>
> (b) engage in any conduct that is unconscionable, misleading, or deceptive, or that is reasonably likely to mislead or deceive."

[29]. I agree with the submissions of the Appellant in this regard that the section clearly is targeted at conduct that is objectively likely to deceive or mislead.

[30]. The repeated, explicit disclaimers considered in the light of the insistence by Cell C's agent or operator on reading the clauses thoroughly to the First Respondent objectively signalled an intention to inform, not to conceal,

deceive, or mislead. This, in my view, is inconsistent with an intention to mislead, deceive, or conceal.

[31]. On this basis alone, the Second Respondent erred or misdirected itself in the circumstances.

[32]. Further, the Second Respondent erred in its finding that the First Respondent faced an unexpected expense for which she would not have budgeted. She was directed twice to consult the Appellant's website to consider different options and rates. She confirmed during the first telephone conversation that she had already done so.

[33]. Clause 4.1, which was read to her, provides as follows:

"Please refer to Cell C's website to view the data charges. We advise that you do not use data while you are roaming outside the borders of South Africa unless you are aware of the necessary data charges. Some networks can charge extremely high rates per megabyte."

[34]. The First Respondent conceded that she connected in Dubai, while airborne, and connected in France.

[35]. Section 48(1)(a)(i), (ii), and (iii) of the CPA prohibit a supplier from offering to supply or enter into an agreement to supply any goods or services at a price that is unfair, unreasonable, or unjust or on terms that are unfair, unreasonable, or unjust. The supplier must not further require a consumer to waive any supplier liability.

[36]. It is difficult in the circumstances of this matter to phantom how it could be held that the First Respondent was offered services at a price that is unfair, unreasonable, or unjust or on terms that can be considered to have been unfair, unreasonable, or unjust, when she was advised not to use data when roaming outside South Africa. The findings of the Second Respondent in this regard are clearly incorrect.

[37]. I am also of the view that the Appellant did not violate the provisions of Section 51(1)(b)(i), (ii), and (iii) of the CPA. The Appellant complied with its statutory duties and advised the First Respondent of the risks associated with international roaming and the usage of data in those circumstances.

[38]. Section 54(1)(b) of the CPA relates to the right of the consumer to the performance of the services in a manner and quality that persons are generally entitled to.

[39]. *In casu,* the services demanded by the consumer depended much on foreign network providers that the Appellant had little control over, and the consumer was forewarned in that regard and yet she proceeded and insisted to be provided the said services.

[40]. The other complaint raised by the Appellant is the penalty fine of R500 000.00. It appears from the record that the penalty was imposed because of the 25% surcharge imposed by the Appellant on the bill of the First Respondent. The complaint is that the Appellant was not afforded an opportunity to address the issue.

[41]. It is alleged that the Appellant was asked, toward the end, whether it imposed any surcharge on the bill and, if so, what percentage it was. The Second Respondent viewed the 25% surcharge as exorbitant.

[42]. Counsel for the Appellant did not have an opportunity to address this issue or to consult properly with the Appellant and was afforded only 20 minutes.

[43]. New evidence in this regard has been provided. The surcharge is mostly cost-based, as it covers the Appellant's essential "bearer costs" of providing international roaming to its customers and is marginally profitable. The profit it made amounted to 4.5%, which equated to approximately R390.00.

[44]. I do not intend to address the issue of the Appellant's bargaining position. This seems to have been considered without any evidence led.

[45]. Considering all the above, I am of the view that the appeal must succeed.

[46]. With respect to the cross-appeal regarding the costs order, it must fail. Moreso, the issue of costs is discretionary. The fact that the Tribunal's order is equated with a High Court order does not necessarily mean that any cost order made by the Tribunal must necessarily be at the High Court scale. Cost orders in the High Court at a Magistrate's Scale are not unusual.

[47]. The Appellant submitted in its heads of argument that there should be no cost order and I see no reason why this court should deviate even though the Appellant is successful. A cost order would burden a consumer who exercised her right to challenge the Appellant in terms of the enabling Acts, namely the CPA and the NCA.

[48]. Therefore, the following order is made:

1. The Appeal is upheld;
2. The Complaint is dismissed.
3. The First Respondent's cross-appeal is dismissed; and
4. No order as to costs is made.

[redacted]

MP Kumalo

Judge of the High Court, Pretoria

I agree

[redacted]

R Francis-Subbiah

Judge of the High Court, Pretoria

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

Appearances:

For the appellant: Adv JJ Meiring & Adv D Sive

Instructed by: Stein Scop Attorneys Inc

C/O Magda Kets Inc

For the first respondent: Adv KD Iles

Instructed by: Trudie Broekman Attorneys

C/O Hack Stupel & Ross