

IN THE KWAZULU-NATAL CONSUMER TRIBUNAL
HELD AT DURBAN

CASE NO: KZNCT15/2022

In the matter between:

KWAZULU-NATAL CONSUMER PROTECTOR
MICHELLE LOWE

1ST PLAINTIFF
2ND PLAINTIFF

And

VDV MAINTENANCE (PTY) LTD

DEFENDANT

JUDGMENT AND REASONS

Coram:

Ms. A. Sewpersad	Presiding Member
Adv N. Nursoo	Member
Adv. R. Hand	Member

Date of Hearing	9 February 2023
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Date of Judgement	23 February 2023
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DETAILS OF HEARING AND REPRESENTATION:

1. The matter was set down for hearing on 9th February 2023 at the Office of the Consumer Protector, Corner of Link and Old Main Road R102, Greenville Building, 2nd Floor, KwaDukuza, KwaZulu-Natal.
2. The First Plaintiff is the office of the KWAZULU-NATAL CONSUMER PROTECTOR established in terms of Section 5 of the KwaZulu-Natal Consumer Protection Act 04 of 2013, represented herein by Mr R. Moodley.
3. The Second Plaintiff is Michelle Lowe, the Consumer, an adult female who resides at unit 23 Villa Leonora, Dolphin Crescent, Ballito, KwaZulu-Natal.
4. The Defendant is VDV Maintenance (Pty) Ltd, a company duly incorporated and registered in terms of the Company Laws of the Republic of South Africa, with registration number 2105/322129/07, having with its principal place of business at 23 Zen Drive, Ballito, KwaZulu-Natal, which address it has chosen as its domicillium citandi et executandi. The Defendant was at all material times represented by Mr Jacques van De Venter, the sole Director.
5. The Consumer appeared in person and the Respondent was in default of appearance.
6. The Respondent was personally served with a notice to attend the hearing on 15 December 2022, and the Tribunal is satisfied that the Defendant is aware of the proceedings and that the matter may proceed in terms of Section 17(1) of the Kwazulu-Natal Consumer Protection Act 04 of 2013.

7. The First Plaintiff handed in a bundle of documents which was admitted into evidence and led the evidence of the Second Plaintiff as well as the evidence of Sizophila Ngobese (Investigator and Complaints Handler employed in the Consumer Complaints Unit of the KwaZulu-Natal Consumer Protector).
8. The proceedings were recorded and form part of the record and shall not be repeated save for the salient aspects relevant to our findings.

ORDER SOUGHT BY THE FIRST PLAINTIFF

The First Plaintiff sought an Order in the following terms:

- i) Confirmation of the termination of the agreement.
- ii) The Respondent's conduct to be declared as a prohibited conduct in contravention of S19(2)(a)(i) and S47(3) and S54 of the Consumer Protection Act No. 68 of 2008;
- iii) To refund to the Second Plaintiff the full amount of R16 550-00(sixteen thousand five hundred and fifty rands) being a reasonable amount required to remedy the defective work or any other suitable amount determined by the KwaZulu Natal Consumer Tribunal;
- iv) Interest on the prescribe rate tempore morae;
- v) The imposing of an administrative fine;
- vi) Further and/or alternative relief.

ISSUE TO BE DECIDED

9. Whether the Defendant's conduct should be declared to be prohibited conduct in contravention of Section 19(2)(a)(i), Section 47(3) and Section 54 of the Consumer Protection Act, No. 68 of 2008?

SURVEY OF EVIDENCE

Michelle Lowe testified as follows:

10. She lodged a complaint with the Office of the Consumer Protector on 14 September 2022.¹
11. Prior to that she lodged a dispute with the Consumer Goods & Services Ombud on 25 April 2022² and the National Consumer Commission on 29 July 2022³. She received no outcomes as there was insufficient evidence.
12. She contacted the Defendant to renovate her bathroom and received a quotation for the sum of R28 335-00 (twenty eight thousand three hundred and thirty five rands).⁴
13. She paid the sum of R19 820-00 (nineteen thousand eight hundred and twenty rands)⁵ and the balance of R8564-00 (eight thousand five hundred and sixty-four rands) prior to the completion of the work⁶ to the Defendant on 10 May 2021.

¹ Pages 34-37 of bundle

² Page 25 of bundle

³ Pages 29 -33 of bundle

⁴ Page 16 of bundle

⁵ Page 17 of bundle

⁶ Page 18 of bundle

14. The Defendant, represented by Mr Jacques De Venter subcontracted the work to another contractor and upon making the final payment she noticed that the bath had a crack.
15. She also found the following defects:
 - The water leaked from the bathtub and vanity into the downstairs unit causing damages to the ceiling in that unit.
 - The air vents were never fitted and as a result there were holes on the wall.
 - The walls were not skimmed properly, and cement was not cleaned from the tiles.
 - The overall sealing of the tub and vanity was incomplete, resulting in leaks.
 - The vanity cupboard had damp which resulted in damages due to the poor sealing.
16. She contacted Mr Jacques De Venter on numerous occasions, and he failed to return her telephone calls despite numerous text messages and phone calls.
17. She also communicated with Mr Vincent, the subcontractor from Urban Flow (Pty)Ltd about the work having to be completed by Mr Jacques De Venter.⁷
18. She subsequently lodged a complaint with the Office of the Consumer Protector on 14 September 2022 and received a call from Mr Jacques De Venter when he received documents from the Office of the Consumer Protector.

⁷ Page 24 of bundle

19. Mr De Venter offered to reimburse her with an amount of R4200-00(four thousand and two hundred rands) and was only prepared to replace the cracked tub with a new tub and re-tiling, sanding the walls and polyfilling where necessary and re-paint and fitting the two air vents.
20. The Second Plaintiff considered the offer as an insult as Mr Jacques De Venter only reacted and responded to a subpoena from the Office of the Consumer Protector and he had failed to honour his commitments to her, and she continues to live with an incomplete bathroom.
21. She contacted Wiseman Plumbing who assessed the plumbing and contacted Zunti Enterprise (Pty) Ltd and formulated a quotation together.⁸The cost of remedying the defect amounted to R16 550-00(sixteen thousand five hundred and fifty rands), which amount she was claiming from the Defendant.
22. She believed that the Defendant exploited her vulnerability as a single mother in addition to abusing her consumer rights.

SIZOPHILA NGOBESE testified as follows.

23. She confirmed the correctness of her report which was included in the evidence bundle⁹ and stated the following:
 - 23.1. Mr Jacques De Venter contacted her on 7th February 2023 enquiring whether he could pay the amount claimed as he was not attending the hearing.

⁸ Page 41 of bundle

⁹ Pages 8-14 of bundle

- 23.2. She informed him that the matter had been scheduled and he contacted her. again, and informed her that if he made payment, he would be conducting his his own investigations would only pay the difference. She informed him that he should attend should he have any submissions to make.
- 23.3. She asked that the Defendant be ordered to pay the amount as claimed in the Summons as well as an administrative fine taking into consideration the conduct of Mr Jacques De Venter.
- 23.4. The Second Plaintiff is a single parent who relied on child support and utilized. same for the renovations and Mr Jacques De Venter abused the trust. relationship. The defective work affected the neighbour and Mr Jacques De Venter was granted an opportunity to remedy the defects and he failed to do so.
- 23.5 The imposition of an administrative fine would create awareness and educate. the public about shoddy service providers and serve as a deterrent that this. type of violation is unacceptable.

ANALYSIS OF THE EVIDENCE AND SUBMISSIONS

24. Section 54, Section 55, and Section 56 of the Consumer Protection Act No. 68 of 2008 deals with a Consumer's rights to demand quality service, a consumer's rights to safe and good quality goods and an implied warranty of quality. The relevant portions of the abovementioned sections in respect of this matter are as follows:

Section 19-Consumer's rights with respect to delivery of goods or supply of service

"(2) *Unless otherwise expressly provided or anticipated in an agreement, it is an implied condition of every transaction for the supply of goods or services that-*

(a)the supplier is responsible to deliver the goods or perform the services-

(i)on the agreed date and at the agreed time, if any, or otherwise within a reasonable time after concluding the transaction or agreement.

Section 54 - Consumer's rights to demand quality service.

"54 (1) *When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to-*

(a) The timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services.

(b) The performance of the services in a manner and quality that persons are entitled to expect.

(c) The use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services; ...

(2) *If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either-*

(a) remedy any defect in the quality of the services performed or goods supplied; or

(b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure."

Section 47-Overselling and over-booking

- (3) If a supplier makes a commitment or accepts a reservation to supply goods or services on a specified date or at a specified time and, on the date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply those goods or services, or similar or comparable goods or services of the same or better quality, class or nature, the supplier must-*
- (a) refund to the consumer the amount, if any, paid in respect of that commitment or reservation, together with interest at the prescribed rate from the date on which the amount was paid until the date of reimbursement; and*
- (b) in addition, compensate the consumer for costs directly incidental to the supplier's breach of the contract, except to the extent that subsection (5) provides otherwise.*

Section 54 - Consumer's rights to demand quality service.

- "54 (1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to-*
- (a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services.*
- (b) the performance of the services in a manner and quality that persons are generally entitled to expect.*

- (c) the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for the performance of the services; and*
- (d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the service.*
- (2) If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either-*
 - (a) remedy any defect in the quality of the services performed or goods supplied; or*
 - (b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.*

25. It is common cause that the Second Plaintiff and the Defendant entered into a partly written, partly oral contract/agreement whereby the Defendant agreed to renovate the bathroom as required by the Second Plaintiff as per the quotation dated 8 March 2021.¹⁰

¹⁰ Page 16 of bundle.

26. It was further agreed between the parties that the Second Plaintiff would pay the Defendant a deposit of R19 820-40(nineteen thousand eight hundred and twenty rands and forty cents) with the balance of R564-00-00(eight thousand five hundred and sixty- four rands) payable prior to completion of the work.
27. The Second Plaintiff paid the Defendant the agreed deposit of R19 820-00(nineteen thousand eight hundred and twenty rands) on 28 May 2021 and the balance of R8564-00(eight thousand five hundred and sixty-four rands) prior to completion of the work.
28. The Defendant represented by Mr Jacques De Venter breached the agreement between the parties in that the services rendered was defective. The bath tub was cracked, resulting in water leaks from the bath tub and vanity into the downstairs unit causing damages to the ceiling of the unit. In addition, the air vents were never fitted and the walls were not skimmed properly and the cement was not cleaned from the tiles.
29. Despite being contacted by the Second Plaintiff on numerous occasions and despite numerous telephone calls and text messages being sent to Mr Jacques Van De Venter, requesting him to complete the work, he failed to return to remedy the defective work.
30. It was only after she lodged the complaint with the Office of the Consumer Protector and upon him being served with a subpoena did Mr Jacques van De Venter attend a meeting to discuss the matter. His conduct displayed a blatant disregard for the Second Plaintiff.

31. The Second Plaintiff did not accept the offer from Mr Jacques van De Venter and viewed it as an insult and acquired a quotation from Zunti Enterprises (Pty)Ltd for the remedying of the defective work in the sum of R16 550-00(sixteen thousand five hundred and fifty rands).
32. After the Defendant failed to remedy the defect the Second Plaintiff was entitled to cancel the contract and claim a refund for the cost of remedying the defect which would effectively put her in the same position, she would have been had the Defendant not provide the defective service.
33. Based on the Second Plaintiff's evidence and the quotation provided by Zunti Enterprise (Pty) Ltd, it is apparent that the renovation of the bathroom did not meet the terms of the agreement between the Second Plaintiff and the Defendant. These defects rendered the services provided unacceptable and the Second Plaintiff is justified in claiming a refund. These defects render the renovation unacceptable and not in conformity with the requirements of the Consumer Protector Act.
34. The Tribunal had some difficulty with the notion that the Defendant oversold or overbooked (in contravention of S47) and thus asked the first Plaintiff to deal with the issue in his address on merits. The issue was debated and the First Plaintiff, correctly in our opinion, conceded that there was no evidence of a contravention of S47.
35. The Tribunal finds that the Defendant contravened S19(2)(a)(i) and S 54 of the Consumer Protection Act in that it not provide the consumer with a timely performance and completion of the services as agreed to in terms of the contract , it did not provide the services in a manner and quality that persons are generally entitled to expect and the installation of the bath tub was defective, thus resulting in consequential damages.

36. The remedy available to a consumer where a supplier fails to perform in terms of S54(1) is that the Consumer may require the supplier to remedy the defect in the quality of the services performed or refund a reasonable portion of the price paid for services performed having regard to the extent of the supplier's failure.
37. In the circumstances the Tribunal finds that the Defendant's conduct is declared prohibited conduct in contravention of S(2)(a)(i) and S 54 of the Consumer Protection Act No. 68 of 2008 and that the Second Plaintiff is entitled to a refund of R16 550-00(sixteen thousand five hundred and fifty rands) being the cost of remedying the defect in the quality of the services performed.
38. Given the conduct of the Defendant in this unfortunate matter and the cavalier attitude displayed in not attending to the defects, not refunding monies he undertook to refund and failing to secure a replacement bath under warranty, we are of the opinion that an administrative penalty should be imposed. This will sound a very necessary warning to others who might want to consider providing such shoddy service.

ORDER

Accordingly, the Tribunal makes the following order:

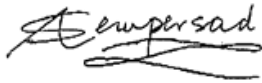
39. The conduct of the Defendant, VDV Maintenance (Pty)Ltd is declared prohibited conduct in contravention of S19(2)(a)(i) and S54 of the Consumer Protection Act No. 68 of 2008.
40. Confirmation of the cancellation of the agreement between the Second Plaintiff and the Defendant.

41. The Defendant is ordered to refund the Second Plaintiff, Michelle Lowe, the sum of R16 550-00(sixteen thousand five hundred and fifty rands).
42. The above amount is to be paid within 30 days of delivery of this judgment.
43. Should the Defendant fail to pay the amount referred to in paragraph 37 above, the Defendant is ordered to pay interest at the prescribed rate from date of this Order to date of payment in full.
44. The Defendant is ordered to pay an administrative penalty of R50 000-00(fifty thousand rands) to the Kwazulu-Natal Provincial Revenue Fund:

Banking details are as follows:

BANK NAME: ABSA
ACCOUNT NAME: KZN PROV-GOV-TREASURY
ACCOUNT TYPE: CURRENT ACCOUNT
ACCOUNT NO: 40 7248 4412
BRANCH NAME: ABSA BUSINESS CENTRE-KZN
BRANCH CODE: 630495
**REF: KZNCT 15/2022 and name of person or
business making payment**

45. The amount referred to in paragraph 41 is payable within 60 (sixty) days of the date of this judgment.
46. There is no order as to costs.



MS ASHA SEWPERSAD

PRESIDING MEMBER

Adv. N. Nursoo (Member) and Adv. R. Hand (Member) concurred.