

IN THE KWAZULU-NATAL CONSUMER TRIBUNAL
HELD AT DURBAN

CASE NO: KZNCT07/2022

In the matter between:

KWAZULU-NATAL CONSUMER PROTECTOR
JANAKIE RAGAVEN

1ST PLAINTIFF
2ND PLAINTIFF

And

PAQT (PTY) LTD

DEFENDANT

DEFAULT JUDGMENT

Coram:

Ms. A. Sewpersad	Presiding Member
Adv N. Nursoo	Member
Ms. P. Ndlovu	Member

Date of Hearing	27 June 2022
Date of Judgement	12 July 2022

DETAILS OF HEARING AND REPRESENTATION:

1. The matter was set down for hearing on 27 June 2022 at 24th Floor, 333 Bay House, Anton Lembede Street, Durban, 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 JANAKIE RAGAVEN, the Consumer, an adult female who resides at Unit 6, Musgrave Gardens, Durban, KwaZulu-Natal.
4. The Respondent is PAQT (Pty) Ltd, a company duly incorporated and registered in terms of the Company Laws of the Republic of South Africa, with registration number K2016352819, having with its principal place of business at 22 Archie Gwillam Crescent, Hillary, Durban, KwaZulu-Natal, which address it has chosen as its domicillium citandi et executandi.
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 13 June 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 a Tereza Naude (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.

ISSUE TO BE DECIDED

9. Whether the Defendant's conduct should be declared to be prohibited conduct in contravention of Section 54, Section 55 and Section 56 of the Consumer Protection Act, No. 68 of 2008?

SURVEY OF EVIDENCE

JANAKIE RAGAVEN testified as follows:

10. During January 2021 she contacted the Defendant who was represented by Mr. P. Moodley (Poovendran) with regards to obtaining a quote for the fabrication and installation of various cupboards for her home situated at Unit 6 Musgrave Gardens in Durban.

11. During March 2021 Mr. P. Moodley attended the Second Plaintiff's home with a man whom he stated was a cabinetmaker and he proceeded to take measurements for the various cupboards required by the Second Plaintiff.
12. On 22 March 2021 Mr. P. Moodley provided the Second Plaintiff with a quote in the sum of R12 650.00(twelve thousand six hundred and fifty rands) and advised her that a deposit of R8 000.00(eight thousand rands) was required before he could commence work at her premises.
13. According to the quotation¹, the Defendant would provide the following services to the Second Plaintiff for the sum of R12 650.00(twelve thousand six hundred and fifty rands):
 - 13.1 Fabricate 1 meter cupboard using melamine oak.
 - 13.2 Fabricate new geyser cupboard using white melamine.
 - 13.3 Fabricate one storage cupboard using white melamine.
 - 13.4 Fabricate one storage cupboard using white melamine upstairs outside.
 - 13.5 Fabricate and install new broom cupboard in kitchen to match existing.
14. The Second Plaintiff accepted the Defendant's quotation and on 26 March 2021 she paid the deposit of R8 000. (Eight thousand rands) to the Defendant.²

¹ First Plaintiff's bundle Page 17

² Ibid Page 16

15. The Second Plaintiff stated that after she paid the deposit, she contacted the said Mr. P. Moodley on numerous occasions to enquire when the Defendant would commence with the work. However, on each occasion Mr. P. Moodley raised various excuses and failed to attend the Second Plaintiff's property to commence with the work.
16. The Second Plaintiff stated that eventually in September 2021 after the numerous telephonic and WhatsApp messages to Mr P. Moodley, he attended her premises to take measurements again. After taking measurements he then returned to her premises and commenced with the work in October 2021. This was five months after she had paid the deposit.
17. The Second Plaintiff stated that Mr. P. Moodley attended her premises on two occasions in October 2021 however he did not complete the work. promised to return to the Second Plaintiff's premises to complete the work, however he never returned.
18. The Second Plaintiff noticed various defects with the work done by the Defendant's employees. She noticed that they had used old material in fabricating the cupboards, that the hinges used were old and rusty and that the cupboards fabricated did not match or align with her existing cupboards as initially agreed upon.
19. The Second Plaintiff stated that she noticed all these defects in the workmanship of the Defendant's employees after they had left her premises.

In this regard she stated that she contacted Mr. Moodley on various occasions to inform him of the said defects as well as to enquire when they would be returning to complete the job and rectify the defects.

20. With regards to the communication between the Second Plaintiff and Mr. P. Moodley of the Defendant, the Second Plaintiff handed up screenshots of various WhatsApp messages she had sent Mr. P. Moodley enquiring as to when he would come to complete the job and rectify the work they had already completed.

21. On 19 October 2021 the Second Plaintiff sent Mr. P. Moodley the following messages:

"I am still waiting for your call. Please call me because I need to know when you are going to finish my work. All your cupboards are on the floor. If the water gets into the area, then cupboards will get damaged. Please call me."

No response to this message was received.

Later that day she sent a further message:

"Poovendran, I wasted the whole day waiting for you. If you could not make it today, why did not you call. You could have called me from home or your staff phone."

No response to this message was received as well.

22. On the 13 November 2021, the Second Plaintiff sent the following message to Mr. P. Moodley:

"Poovendran, I have taken pictures of your work and sent them to my children. I have also told them that you have pressurized me into putting money into your account to get my work started and that you wanted 65% deposit which I did in March this year. It is now mid-November. Every time I call you to complete my work you ignore my calls. If you don't call me to give me a definite date as to when you will complete my work, then my children will definitely take action by exposing you to the media so please call me or my daughter."

23. By the end of November 2021, the Defendant had still not returned to the Second Plaintiff's premises to complete the work or rectify the work he had already done. The Second Plaintiff thereafter sent Mr. P. Moodley the following message:

"Poovendran please return my R8,000.00 and take away your stuff from my place. I am tired of your excuses. I will get my daughter to send my banking details, or you can come home and hand me my money. You made me a broom cupboard that is not accommodating my brooms. The timber you used is not new. Where did you pick up the timber? I took pictures of the cupboards only to find that they are far from new timber. I am very disappointed with you. If I do not get my money, I will report you to the relevant authority."

Mr. Moodley responded to this message stating the following:

"Hi Aunty Janakie, I purchased the timber from KNK Boards on Sunset Avenue in Chatsworth. I did not use old timber as we do not stock boards. I do apologise as my health has been an issue. It is fine you can keep the cupboards I will sort out your refund. My parents did raise me right, I did not complete the job."

24. Despite stating the above the Defendant did not refund the deposit of R8,000.00(eight thousand rands) to the Second Plaintiff.
25. On 21 December 2021 due to no response and not receiving the refund by the Defendant, the Second Plaintiff approached and submitted a complaint to the First Plaintiff. The complaint was investigated by Tereza Naude, the Complaints Handler of the First Plaintiff.
26. The relief sought by the Second Plaintiff is a refund of the deposit of R8000.00(eight thousand rands) which she paid to the Defendant in March 2021.

THE EVIDENCE OF TEREZA NAUDE:

27. She confirmed her report which was included in the evidence bundle³ handed up by the First Plaintiff and stated the following:

³ Ibid Pg 9-13

- 27.1 She first contacted the Defendant on the 23 December 2021 by email however she did not receive a response. On 25 January 2022 she telephonically contacted Mr. P. Moodley, the representative of the Defendant and he informed her that he would refund the deposit to the Second Plaintiff, but only 50% of the deposit paid (the full deposit was in the sum of R8 000.00).
- 27.2 Tereza Naude discussed this with the Second Plaintiff who stated that she believed she was entitled to the full deposit of R8000.00(eight thousand rands) due to the manner in which the work was partly done as well as the conduct of the Defendant thus far. The Second Plaintiff stated that despite this she was prepared to accept immediate payment of R4000.00(four thousand rands) in order to bring the matter to finality.
- 27.3 On 10 February 2022 Mr. P. Moodley sent an email to Tereza Naude stating that he will refund the sum of R4 000.00(four thousand rands) to the Second Plaintiff by 7 March 2022.
- 27.4 After the above email correspondence Tereza Naude attended the premises of the Second Plaintiff to view the cupboards installed by the Defendant. On attendance to the Second Plaintiff's premises Tereza Naude confirmed that the cupboards were incomplete and noted that the trim and handles did not match the existing cupboards, the hinges were very loose, and the finishes were rough.

27.5 Tereza Naude stated that despite the Defendant's offer to return the sum of R4 000.00(four thousand rands) to the Second Plaintiff the Defendant has to date refused to pay any amount over to the Second Plaintiff and has not responded to her calls or emails.

27.6 Tereza Naude further stated that in her capacity as a Complaints Investigator she believed that the Defendant contravened the Consumer's (Second Plaintiff's) rights in terms of Section 54, Section 55 and Section 56 of the Consumer Protection Act 68 of 2008 and it is for this reason that she referred the matter to the Consumer Tribunal.

ANALYSIS OF THE EVIDENCE AND SUBMISSIONS

28. 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 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 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 55 - Consumer's rights to safe and good quality good

- "55 (1) ...
- (2) *Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that-*
 - (a) *are reasonably suitable for the purposes for which they are generally intended.*
 - (b) *are of good quality, in good working order and free of any defects; ...*
 - (3) *In addition to the right set out in subsection (2)(a), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier-*
 - (a) *ordinarily offers to supply such goods; or*
 - (b) *acts in a manner consistent with being knowledgeable about*

*the use of those goods,
the consumer has a right to expect that the goods are reasonably
suitable for the specific purpose that the consumer has indicated”...*

Section 56- Implied warranty of quality

- "56 (1) In any transaction or agreement pertaining to the supply of
goods to a consumer there is an implied provision that the
producer or importer, the distributor and the retailer each
warrant that the goods comply with the requirements and
standards contemplated in section 55, except to the extent that
those goods have been altered contrary to the instructions, or
after leaving the control, of the producer or importer, a distributor or the
retailer, as the case may be.*
- (2) Within six months after the delivery of any goods to a consumer, the
consumer may return the goods to the supplier, without penalty and
at the supplier's risk and expense, if the goods fail to satisfy the
requirements and standards contemplated in section 55, and the
supplier must, at the direction of the consumer, either –*
- (a) repair or replace the failed, unsafe, or defective goods; or*
- (b) refund the consumer the price paid by the consumer, for the
goods...."*

29. The Second Plaintiff and the Defendant entered into a partly written, partly oral contract/agreement whereby the Defendant agreed to fabricate and install various cupboards required by the Second Plaintiff as indicated in the quote dated 22 March 2021. The parties agreed that the Second Plaintiff

would pay the Defendant a deposit of R8000.00(eight thousand rands) and once this deposit was paid the Defendant would begin the work agreed to and complete it within a reasonable time.

30. The Second Plaintiff paid the Defendant the agreed deposit of R8000.00(eight thousand rands) on 26 March 2021.
31. The Defendant breached the agreement between the parties in that it did not commence with the work within a reasonable time, it failed to complete the work and the work done was riddled with various defects.
32. The Second Plaintiff notified Mr. Moodley of the defects and requested that he return to her premises to rectify the defects and to complete the work agreed upon. The Defendant failed to return to the Plaintiff's premises to rectify the work or complete the existing work.
33. Eventually in December 2021 nine months after she had paid the deposit, Second Plaintiff sent Mr. P. Moodley a WhatsApp message effectively cancelling the agreement between herself and the Defendant due to the Defendant's breach. In her message she requested repayment of the refund in the sum of R8 000.00(eight thousand rands) from the Defendant and offered return of the incomplete and defective work which was left at her premises.
34. The Defendant contravened Section 54 (1) (a), (b) and (c) 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 entered

into during March 2021, it did not provide the services in a manner and quality that persons are generally entitled to expect and the installation of the goods were defective. The Defendant only attended the Second Plaintiff's premises in October 2021, six months later, and provided an incomplete defective service. The quality of its work was poor and defective.

35. The remedy available to a consumer where a supplier fails to perform in terms of section 54(1) is that the Consumer may require the supplier to remedy the defect or claim a reasonable portion of the price paid for services having regard to the extent of the supplier's failure.
36. In terms of section 55 of the Consumer Protection Act the consumer has a right to receive goods that are suitable for the purpose for which they are intended and of a quality in good working order and free of defects. In a situation where a consumer has specifically informed the supplier of the particular purpose the consumer wishes to acquire the goods and the supplier offers to supply such goods and acts in a manner consistently being knowledgeable about those goods the consumer has a right to expect that those goods are reasonably suitable for the specific purpose it is acquired. In the present matter the Second Plaintiff informed Mr. Moodley of the Defendant of the cupboards she required and the purpose thereof. In providing a quotation for these cupboards the Defendant undertook to address the fabrication and installation of cupboards in accordance with what was agreed upon. The Second Plaintiff had a right to receive goods reasonably suitable for the purpose they were intended, of good quality, working order and free of defects. The evidence led clearly indicate that the Defendant contravened section 55 of the Consumer Protection Act.

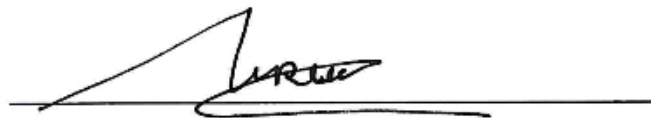
37. Section 56 of the Consumer Protection Act deals with an implied warranty of quality. In any agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer warrants that the goods comply with the requirements and standards contemplated in Section 55. Section 56 further states that within six (6) months after the delivery of any goods to the consumer may return the goods to the supplier without penalty and at the supplier's risk if the goods fail to satisfy the requirements and standards contemplated in Section 55 and that the supplier must at the direction of the consumer either repair or replace the fail, unsafe defective goods or refund to the consumer the price paid by the consumer for the goods. In the present matter the Second Plaintiff gave the Defendant an opportunity to remedy the defects as well as to complete the work. The Defendant through its inaction chose not to remedy the defects or complete the work. In fact, in the WhatsApp message from Mr. Moodley to the Second Plaintiff which is referred to above, the Defendant acknowledged that the work done was incomplete, stated that it would refund the deposit paid by the Second Plaintiff and further stated that the Second Plaintiff could keep the existing incomplete work.

38. In the circumstances the Tribunal finds that the Defendant's conduct is declared prohibited conduct in contravention of S54, S55 and S56 of the Consumer Protection Act No. 68 of 2008 and that the Second Plaintiff is entitled to a full refund of the deposit in the sum of R8000.00(eight thousand rands).

ORDER

Accordingly, the Tribunal makes the following order:

39. The conduct of the Defendant, PAQT (Pty) Ltd is declared prohibited conduct in contravention of S54, S55 and S56 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, Janakie Ragaven, the sum of R8 000.00(eight thousand rands).
42. The above amount is to be paid within 30 days of delivery of this judgment.
43. There is no order as to costs.

A handwritten signature in black ink, appearing to read 'Nursoo', is written over a horizontal line.

Adv N Nursoo

Member

Ms. A. Sewpersad (Presiding Member) and Ms. P. Ndlovu (Member)
concurring