

**IN THE KWAZULU-NATAL CONSUMER TRIBUNAL
HELD IN MKUZE**

Case number: **KZNCT11/2022**

In the matter between:

**KWAZULU-NATAL CONSUMER PROTECTOR
GREGORY CANNING**
(Name of the Consumer)

**FIRST PLAINTIFF
SECOND PLAINTIFF**

and

ZULULAND GUNS AND AMMO (PTY) LTD

DEFENDENT

Coram:

Prof. B Dumisa	–	Chairperson & Presiding Member
Ms N Cawe	–	Member
Adv R Hand	-	Member

Date of Hearing	–	24 August 2022
Date of Judgment	-	14 September 2022

JUDGMENT AND REASONS

PLAINTIFFS

FIRST PLAINTIFF

1. The First Plaintiff in this matter is the **OFFICE OF THE KWAZULU-NATAL CONSUMER PROTECTOR**, established in terms of Section 5 of the KwaZulu-Natal Consumer Protector Act (the “Act”) (hereinafter referred to as “the First Plaintiff”), with head Offices at 270 Jabu Street, Pietermaritzburg, in the Province of KwaZulu-Natal.

2. The Office of the KwaZulu-Natal Consumer Protector falls under the Department of Economic Development, Tourism and Environmental Affairs (EDTEA) in the Province of KwaZulu-Natal.
3. At the hearing, the First Plaintiff was represented by Mr Ryan Moodley, a Deputy Director in the Office of the KwaZulu-Natal Consumer Protector, in the employ of the First Plaintiff.
4. The First Plaintiffs Investigation Report was deposited by Ms Ntumiseng Nketlana, an Assistant Director within EDTEA, who is also appointed as an Investigator within the Office of the KwaZulu-Natal Consumer Protector, in the employ of the First Plaintiff.

SECOND PLAINTIFF

5. The Consumer, who is the Second Plaintiff in this matter is Mr **GREGORY CANNING**, a major male who resides at Msinene Estate, Hluhluwe, in the Province of KwaZulu-Natal (hereinafter referred to as “the Second Plaintiff” or “the Consumer”).
6. The Second Plaintiff lodged a complaint against the Defendant, on behalf of their non-government entity **WILD TOMORROW FUND SOUTH AFRICA NCP**, in around October 2021.
7. At the Hearing, the Second Plaintiff represented himself.

DEFENDANTS

8. The Defendant in this matter is **ZULULAND GUNS AND AMMO (PTY) LTD**, a private company duly registered and incorporated in terms of the Companies Act, Act 61 of 1973 of the Republic of South Africa, as amended, with its principal place of business situated at Unit 2/3 Orielo Centre, 30 Jan Smuts Avenue, Mtubatuba, in the Province of KwaZulu-Natal (the “Defendant” or “Zululand Guns and Ammo”).

9. The Defendants did not attend the Hearing, and neither were they represented.

BACKGROUND

10. On or about 31 August 2021, the Consumer placed an order for wildlife rangers tools of trade with the Defendants. According to Tax Invoice 2021/0025, dated 31 August 2021, provided by the Consumer, the products ordered were

10.1 These goods will be conveniently collectively called “the rangers’ tools of trade”

- 9 x Earmuffs @ R150.00 = R 1350.00
- 9 x shooting glasses @ R250.00 = R 2250.00
- 13 x Wasp Torches @R250.00 = R 3250.00
- 7 x R1 cleaning kits @R450.00 = R 3150.00
- 5 x 9mmp cleaning kits @R275.00 = R 1375.00
- 1 x .30 cleaning kit @R450.00 = R 450.00
- 1 x .22 cleaning kit @R450.00 = R 450.00
- TOTAL Including 15% VAT R12274.00

- 10.2 These wildlife rangers tools of trade were to be sponsored to game rangers to be utilized at the wildlife game reserve;

- 10.3 He paid in full an amount of R12 274.00 (Twelve thousand, Two Hundred and Seventy Four Rands) for these products.

11. The Consumer complains that

- 11.1 The goods were supposed to be delivered the following day, on the 1st of September 2021 as agreed to by both parties at the time of payment on 31 August 2021;

- 11.2 The goods have never been delivered to date;

11.3 The Defendant kept on giving various excuses as to why the goods were never delivered, and this went on for months; and

11.4 When the Consumer requested his money back, which the defendant promised on numerous times to do so, this too has never materialized.

APPLICATION TYPE AND ORDER SOUGHT

12. The KZN Consumer Tribunal (hereinafter referred to “the Tribunal”) derives the jurisdiction for hearing this matter under Section 21 of the KwaZulu-Natal Consumer Protection Act, 4 of 2013 (the KZNCPA).

13. This matter will be heard in terms of Section 4(5)(a) and (b), Section 19, Section 47(3), and Section 65(2)(b) and (c) of the Consumer Protection Act, No 68 of 2008 (the “CPA”).

APPLICABLE SECTIONS OF THE CPA

14. Section 4(5) Realisation of Consumer Rights

“(5) In any dealings with a consumer in the ordinary course of business, a person must not

(a) Engage in any conduct contrary to, or calculated to frustrate or defeat the purpose and policy of this Act;

(b) Engage in any conduct that is unconscionable, misleading, or deceptive, or that is reasonably likely to mislead or deceive; or”

15. Section 19 Consumer’s rights with respect to delivery of goods or supply of service

“(1)

(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;

(ii) at the agreed place of delivery or performance; and

- (iii) at the cost of the supplier, in the case of delivery of goods; or*
 - (b) the agreed place of delivery of goods or performance of services is the supplier's place of business, if the supplier has one, and if not, the supplier's residence; and*
 - (c) Goods to be delivered remain at the supplier's risk until the consumer has accepted delivery of them, in accordance with this section.*
- (3) If an agreement does not provide a specific date or time for delivery of any goods or performance of any services, the supplier must not require that the consumer accept delivery or performance of the services at an unreasonable time".*

16. Section 47(3) Over-selling 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.*

17. Section 65(2) Supplier to hold and account for consumer's property

- "(1)*
- (2) When a supplier has possession of any prepayment, deposit, membership fee, or other money, or any other property belonging to or ordinarily under the control of a consumer, the supplier –*
- (a) must not treat that property as being the property of the supplier;*
 - (b) in the handling, safeguarding and utilisation of that property, must exercise the degree of care, diligence, and skill that can reasonably be expected of a person responsible for managing any property belonging to another person; and*
 - (c) is liable to the owner of the property for any loss resulting from a failure to comply with paragraph (a) or (b).*

THE CONSUMER'S PRAYERS

18. The Consumer's prayers were for:

18.1 The defendant's conduct to be declared prohibited conduct in contravention of S4(5)(a) and (b), S19, S47(3), S65(2)(b) and (c) of the CPA;

18.2 To refund the Second Plaintiff the amount of R12 274.00 (twelve thousand two hundred and seventy-four rand) being the total amount paid for the goods;

18.3 Interest on the amount referred to in 18.2 above at the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975; and

18.4 Further and /or alternative relief.

THE FIRST AND SECOND PLAINTIFFS' EFFORTS TO RESOLVE THIS COMPLAINT

19. The Second Plaintiff had initially contacted the Consumer Goods & Service Ombud (CGSO), on 20 October 2022, to resolve this matter. This was however unsuccessful due to the failure to cooperate or respond on the part of the Defendant.

20. The First Plaintiff also made attempts, both in writing and telephonically, to contact the defendant but failed to receive any response.

SUMMONS SERVED ON THE DEFENDANTS

21. On the 1st of August 2022, the Summons was served on the Defendant, indicating the KZN Consumer Tribunal set down date of 24 August 2022.

22. The Defendants did not respond to the papers served on them; there was no answering affidavit.

THE HEARING

23. The matter was set down for hearing, on merits, on a default basis on 24 August 2022 because the Respondent had failed to file an answering affidavit; and the Tribunal had satisfied itself that the Defendant had been properly served, and was not in attendance at the hearing of its volition:

23.1 The legal provisions (Sections) as well as the Rules and Regulations of both the Consumer Protection Act, Act 68 of 2008 (the "CPA") as well as the National Credit Act, Act 34 of 2005 (the "NCA") equally apply at the KwaZulu-Natal Consumer Tribunal.

23.2 Rule 13 of the National Consumer Tribunal Rules is the most important provision in terms of dealing with matters being heard on a Default Basis. It clearly lists how Respondents / defendants may oppose applications referred to the Tribunal.

23.3 Rule 13(4) states that the Respondent's answering affidavit must set out in numbered paragraphs

- (a) A concise statement of the grounds on which the matter is opposed;
- (b) Facts or allegations contained in the application or referral that the Respondent admits;
- (c) Facts or allegations contained in the application or referral that the Respondent denies and the grounds for such a denial; and
- (d) The material facts or points on which the Respondent relies.

23.4 Rule 13(5) states that "Any fact or allegation in the application or referral not specifically denied or admitted in an answering affidavit, will be deemed to have been admitted".

24. At the hearing, the Consumer simply repeated everything as contained under BACKGROUND above. In the case of adjudicating cases being heard on a default basis, both the specific Rules of Procedure and legislation, and general legal practice, dictate that the Tribunal must regard and/or accept submissions by the Consumer as uncontested and admitted, given that the Defendant chose not to participate in this process where they could have given a contrary view on certain aspects of this case.

- 25.** Given that this matter was heard on a default basis, there was no need for leading the evidence of two witnesses who attended the hearing with the intention of giving evidence. Those witnesses are:

25.1 Ms Ntumiseng Nketlana (Investigator)

25.2 Ms Tori Gray (Project Manager)

CONCLUSION

- 26.** It is clear from the behaviour of the Defendant, both towards the Consumer and towards the First Plaintiff that they had absolutely no respect for the Consumer's Rights, and hence in gross violation of Section of Section 4(5) of the CPA.
- 27.** The Defendant had undertaken to deliver the rangers' items, as agreed to and paid for by the Consumer, the very following day on 1 September 2021. The Defendant never delivered on this promise, and actually never delivered the rangers' items. This was in gross violation of Section 19(2) and 19(3) of the CPA.
- 28.** The Defendant never clearly indicated why they could never deliver these rangers' items. The Consumer concluded that the Defendant either had no capacity to deliver these goods, or was simply unwilling to supply them for whatever other reasons. It is against that background that the Consumer demanded the full refund of his money, in terms of Section 47(3) of the CPA.
- 29.** Whilst the Consumer has not specifically stated what the different excuses the Defendant made for this non-delivery of goods, the Plaintiffs have understandably also alleged that the Defendant was in breach of Section 65(2) of the CPA, on grounds that the Defendant had not returned the money that was given to them for goods that were never delivered.

ORDER

30. The Defendant's conduct is declared prohibited conduct in contravention of Sections 4(5)(a), Section 19, Section 47(3), and Section 65(2)(b) and (c) of the CPA.
31. The Defendant is ordered to refund the Second Plaintiff the amount of R12274.00 (twelve thousand two hundred and seventy-four Rand only) being the total amount paid for the goods.
32. The interest will be payable on the amount of R12274.00 (Twelve thousand two hundred and seventy-four Rand), at the rate of 9.00 percent, with effect from 31 August 2021.
33. The Defendant is ordered to pay an administrative penalty of R50 000.00 (Fifty Thousand Rand) to the bank account of the KwaZulu-Natal Provincial Revenue Fund: Banking Details are as follows:

BANK NAME : ABSA

ACCOUNT NAME : KZN PROV GOV- TREASURY

ACCOUNT TYPE : CHEQUE ACCOUNT

ACCOUNT NUMBER : 40 7248 4412

BRANCH NAME : ABSA BUSINESS CENTRE – KZN

BRANCH CODE : 630495

Reference : KZNCT11/2022 and Name of Person or Business making payment

34. The total amounts payable within 60 (SIXTY) days of the date of this judgment.

DATED ON THIS 13th DAY OF SEPTEMBER 2022

[Signed]

Prof B Dumisa

PRESIDING TRIBUNAL MEMBER

Ms. N. Cawe (Member) and Adv R Hand (Member) concurring.