

**IN THE KWAZULU NATAL CONSUMER TRIBUNAL
HELD IN PORT SHEPSTONE**

Case Number: KZNCT13/2022

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

LOUIS DU PLESSIS

SECOND PLAINTIFF

and

LITEPRO(PTY)LTD

DEFENDANT

Coram:

Prof B. Dumisa – Chairperson & Presiding Member

Ms P. Dabideen –Member

Ms A Sewpersad - Member

Date of Hearing – 02 November 2022

Date of Judgment -26 November 2022

JUDGEMENT 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 Kwa Zulu Natal Consumer Protector Act 04 of 2013 (the "Act") (hereinafter referred to as "the First Plaintiff"), with Head Offices at 270 Jabu Ndlovu 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 Adv. R Moodley, the Deputy Director in the Office of the Consumer Protector KwaZulu-Natal, in the employ of the First Plaintiff.
4. The First Plaintiffs Investigation Report is deposed to by Ms S Kleinbooï, Assistant Director for Consumer Protection Services in the employ of the First Plaintiff.

SECOND PLAINTIFF

5. The Consumer, who is the Second Plaintiff in this matter is **LOUIS DU PLESSIS** a major male, who resides in Port Edward, in the Province of KwaZulu-Natal (hereinafter referred to as "the Second Plaintiff" or "the Consumer").
6. The Second Plaintiff lodged his complaint against the Defendant on 5 July 2022.
7. At the hearing, the Second Plaintiff represented himself.

DEFENDANT

8. The Defendant is **LITE PRO (PTY) LTD** a private Company duly registered and incorporated in terms of the Company's Act 61 of 1973 of the Republic of South Africa as amended with its principal place of business situated at Portston Cntr, Aitken Street, Port Shepstone which address it has chosen as its domicilium citandi et executandi (hereinafter referred to as "the Respondent").
9. The Defendant did not attend the hearing nor were they represented at the hearing

BACKGROUND

- 10.1 On about the 20th of October 2021 the Second Plaintiff placed an order with the Defendant for Three (3) air conditioning units.
- 10.2 The Second Plaintiff introduced into evidence a quotation (LDP1) from Defendant to the Second Plaintiff in terms of which Defendant undertook to supply and install for the Second Plaintiff the following;
- 1x 12000 btu Airlux aircon unit @ 4500.00
 - 2x 18000 btu Airlux aircon unit @ 14400.00
 - 1x Labour @ 4200.00
- 10.3 The Second Plaintiff accepted the quotation and on 20 October 2021 paid to Defendant an amount of R16170.00 as a deposit for the supply and installation as quoted in LDP1 above.
- 10.4 The parties agreed on an installation date for the units for the 27th of October 2021 subsequently this date changed to 1 November 2021.
- 10.5 Defendant failed to arrive to install the units on either of the dates in 10.4 above and has not done so to date.
- 10.6 First Plaintiff and Second Plaintiff obtained undertakings from Defendant that it would refund the Second Plaintiff however Defendant failed to refund any amount to the Second Plaintiff to date.

APPLICATION TYPE AND ORDER SOUGHT

11. The KZN Consumer Tribunal (hereinafter referred to as "**the Tribunal**") derives its jurisdiction for the hearing of this matter under Section 21 of the KwaZulu-Natal Consumer Protection Act 4 of 2013 in ("KZN CPA").
12. 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 number 68 of 2008 (CPA).

APPLICABLE SECTIONS OF THE CPA.

13. 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.

14. 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 case of delivery of goods; or**
- (c) the agreed place of delivery of goods or performance of services is the supplier's business, if the supplier has one and if not, the supplier's residence and*
- (d) Goods to be delivered remain at the suppliers risk until the consumer has accepted delivery of them in accordance with this Section.*

(3) Agreement does not provide a specific date or time for the delivery of any goods or performance of any service. The supplier must not require that the consumer accept delivery or performance of the services at an unreasonable time.

15. Section 47(3) Over-selling and over-booking

"(1).....

(2).....

(3) *If a supplier makes a commitment 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 a 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 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*

16. Section 65(2) Supplier to hold and account for consumers property

(1)....

(2) *When a supplier has possession of any prepayment., deposit, membership fee, or other money, or any of her 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 utilization 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 is liable to the owner of the property for any loss resulting from a failure to comply with paragraph (a) or (b)*

17. The Consumers Prayers

- 17.1 The Consumer's prayers were for:
- 17.2 Confirmation of the termination of the agreement
- 17.3 Defendant's conduct to be declared as prohibited conduct in contravention of Section 19 (2)(a)(i) and Section 47 (3) and Section 54 of the Consumer Protection Act 68 of 2008
- 17.4 To refund to the Second Plaintiff the full amount of R16170.00 being the amount paid for the installation of three air conditioning units
- 17.5 Pay interest on the amount referred to in 17.3 above at the morae rate in terms of the Prescribed rate of interest Act 53 of 1975 and
- 17.6 Directing the Defendant to pay an administrative penalty and or making any other appropriate order contemplated under section 4(b)(ii) of the CPA whilst the imposition of an administrative penalty is appropriate under the circumstances it may not necessarily be appropriate imposing such a higher administrative fine given that there is no proof that the respondent profited significantly from their contraventions of the CPA

The First and Second Plaintiffs Efforts To Resolve This Complaint

- 18. The Second Plaintiff had lodged a complaint with the NCC and to the Consumer Goods Services Ombudsman; both of these offices were unsuccessful in gaining any corporation from the Defendant

19. The Second Plaintiff instructed his attorneys to send a letter of demand to the Defendant on the 3rd of February 2022 and which demand was ignored by the Defendant
20. On the on the 23rd of September 2022 the summons was served on the Defendant indicating the KZN Consumer Tribunal set down date of the 2nd of November 2022
21. The Defendant did not respond to the papers served on them there nor was any answering affidavit filed

THE HEARING

22. This matter was heard on a default basis
- 22.1 The matter was set down for hearing on the merits on the 2nd of November 2022 because the Defendant had failed to file in 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 own volition.
- 22.2 The legal provisions (Sections) the Rules and Regulations of both the Consumer Protection Act 68 of 2008 (the CPA) as well as the National Credit Act 34 of 2005 (the NCA) equally apply at the Kwazulu-Natal Consumer Tribunal.

- 22.3 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 or Defendants may oppose applications referred to the Tribunal.
- 22.4 Rule 13 (4) states that the respondent answering affidavit must set out in numbered paragraphs.
- a) a concise statement of the grounds on which the matter is opposed;
 - b) all allegations contained in the application or referral that the respondent admits;
 - c) all 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
- 22.5 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"
23. At the hearing the consumer simply repeated everything is contained under background above. In the case of adjudicating cases being heard on a default basis with 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.

CONCLUSION

24. It is clear from the behaviour of the Defendant both towards the First Plaintiff and the Second Plaintiff that the Defendant had absolutely no respect for the Consumer's rights and hence in gross violation of Section 4 (5) of the CPA.
25. The Defendant had undertaken to install the air conditioning units on the 27th of October 2021 and failed to do so despite being paid on 20 the October 2021. This was gross violation of Section 19 (2) and (3) of the CPA.
26. The Defendant has never indicated why the installation could not be completed. We cannot conclude that the Defendant had no capacity to deliver the goods, or was simply unwilling to supply them for whatever other reasons. It is against this background that the Consumer demanded the full refund of his money in terms of Section 47 (3) of the CPA.


ORDER

27. Having considered all the submissions by the Second Plaintiff, with the Defendant choosing not to make any submissions or cooperate with the Tribunal
- 27.1 The agreement between the Consumer and Defendant be and is hereby terminated;
- 27.2 The Defendant's conduct is declared as prohibited conduct in contravention of Section 19 (2) (a) (i) and Section 47 (3) and Section 54 of the consumer protection act 68 of 2008
- 27.3 The Defendant is ordered to refund to the Second Plaintiff the full amount of R16170.00 being the amount paid for the installation of three air conditioning units
- 27.4 Defendant is ordered to pay interest of 10.5 percent the amount referred to above; and
- 27.5 The Defendant is ordered in terms of section 4(b)(ii) of the CPA to pay an administrative fine of R 20 000.00 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 NO. : 4072484412
BRANCH NAME: Absa business centre KZN
BRANCH CODE: 630495
REF. :
KZNCT13 /2022 Name of Person or Business making Payments

27.6 The total amounts are payable within 60 days of the date of this judgement.

DATED ON THIS 26th DAY OF NOVEMBER 2022



MS P DABIDEEN
MEMBER

Prof B. Dumisa (Chairperson and Presiding Member) and Ms. A Sewpersad (Member)
concurred