

**IN THE KWAZULU NATAL CONSUMER TRIBUNAL  
HELD IN DURBAN**

**Case Number: KZNCT15/2023**

In the matter between:

**KWAZULU NATAL CONSUMER PROTECTOR**

**FIRST PLAINTIFF**

**SANDRA SUDU**

**SECOND PLAINTIFF**

**(Name of the Consumer)**

and

**UBANTU PROJECTS**

**DEFENDANT**

*Coram:*

Prof B. Dumisa – Chairperson & Presiding Member

Ms P. Dabideen – Member

Ms A Sewpersad – Member

Date of Hearing – 6 SEPTEMBER 2023

Date of Judgment – 14 SEPTEMBER 2023

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**JUDGEMENT AND REASONS**

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**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 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 Mr 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 was deposed to by **Ms SIZOPHILA NGOBESE** , an Assistant Director, a Complaints Handler within the Office of the KwaZulu-Natal Consumer Protector, at its Head Offices at 270 Jabu Ndlovu Street, Pietermaritzburg, in the Province of KwaZulu-Natal.

## SECOND PLAINTIFF

5. The Consumer, who is the Second Plaintiff in this matter is **MRS SANDRA SUDU**, a major female, who resides at 15 Plane Road, Tongaat, 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 Respondent on the 1<sup>st</sup> August 2023
7. At the hearing, the Second Plaintiff represented herselfcortana play music .

## RESPONDENT

8. The Respondent is **UBANTU PROJECTS**, with its principal place of business situated at 38 Nertum Road Lotus Park Isipingo , which address it has chosen as its domicilium citandi et executandi (hereinafter referred to as “the Respondent”).
9. The Respondent did not attend despite being properly notified to attend the hearing. The Tribunal was satisfied that the Respondent was aware of the matter proceeding and that it was entitled to proceed with the matter and hence the matter was heard by default.

## APPLICATION TYPE AND ORDER SOUGHT

10. This KZN Consumer Tribunal (hereinafter referred to as “the Tribunal) derives the jurisdiction for hearing this matter under Sections 10 and 21of the KwaZulu-Natal Consumer Protection Act,4 of 2013 (the KZNCPA).This matter is in terms of Section 4(5)(a), Section 15,Section 54(1) and Section 65(2)(b) and (c), of the Consumer Protection Act No 68 of 2008 (the CPA).

11. The Second Plaintiff sought an order against the Respondent in the following terms:
  - 11.1 The Defendant's conduct is declared prohibited conduct in contravention of section 19 and section 47(3) of the Consumer Protection Act 68 of 2008
  - 11.2 Directing the Respondent to refund the Second Plaintiff the full amount of R11 000,00 (Eleven Thousand Rand) being the total amount paid by the Second Plaintiff to the Defendant;
  - 11.3 Directing the Defendant to pay interest rate tempore morae;
  - 11.4 Directing the Defendant to remove his material and equipment from the Second Plaintiff's residence within seven days after the judgement is granted
  - 11.5 To order Defendant to pay all of the above payments within 15 days of the judgment to the Second Plaintiff's bank account.
  - 11.6 Directing the Defendant to refrain from conducting future business in a manner that is inappropriate and to make any other order that the Consumer Tribunal deems necessary
  - 11.7 Any further and/or alternate relief.

## **MATTERS TO BE DECIDED**

- 12 The Tribunal has to decide whether:
  - 12.1 The Defendant breached the provisions of the Act as alleged; and
  - 12.2 The appropriate relief is to be granted.

## BACKGROUND

- 13 The Second Plaintiff submitted as follows:
- 13.1 The Second Plaintiff was intent on repairing damage caused by floods to the roof of her home ;
- 13.2 The Second Plaintiff contacted the Defendant to provide a quotation to effect the repairs. The Defendant or his employees inspected the property on or about the 31<sup>st</sup> January 2023 and furnished the Second Plaintiff with a quotation for R16 496.26.
- 13.3 The Second Plaintiff accepted the quotation and was requested by the Defendant to pay over an amount equivalent to 75% of the value of the work to Defendant before the work would commence.
- 13.4 On the 10<sup>th</sup> of April 2023, the Second Plaintiff expressed some reservations about paying over the deposit and was reassured by the Defendant that he would provide quality work etc. The Second Plaintiff on this reassurance duly paid an amount of R 11 000, 00 in cash to the Defendant. The Defendant had failed to issue an official receipt to the Second Plaintiff as he failed to produce a receipt book despite being reminded that the Second Plaintiff would require a receipt for any payments made. The Defendant only upon the Second Plaintiff's insistence signed an acknowledgement of receipt of the R11 000.00 on the Defendant's quotation to the Second Plaintiff.
- 13.5 The Second Plaintiff was assured by the Defendant that work would commence on her property on the 12<sup>th</sup> of April 2023 however the Defendant failed to commence work on the 12<sup>th</sup> April 2023 as only one employee was sent to Second Plaintiff's premises with no tools or materials available to commence work. On the 13<sup>th</sup> of April 2023, the same employee again arrived with no tools like a ladder to get to the roof but a few items of material like two buckets of paint, one roll of plastic, a bag of cement, two bags of sand and a small packet of ceiling nails, ( not roof nails )
- 13.6 The Second Plaintiff's made various attempts to reach the Defendant telephonically and via email however despite undertaking to refund the Second Plaintiff the Defendant has ignored all attempts to resolve the matter.

- 13.7** The Tribunal was further presented with an email sent by the Defendant to the Second Plaintiff on the 18<sup>th</sup> of April 2023 in terms of which the Defendant indicated that

*“.....u called me when I was busy with a client n u stated that u dn’t think we should go on with the job. The materials bought is of no use to me as I buy according to the job . My office will sort out all our cost before we give you a total . Thank you”*

- 13.8** On the 1 August 2023 , the Second Plaintiff finally decided to officially lodge this complaint with the First Plaintiff.

### **THE FIRST PLAINTIFF’S EFFORTS TO RESOLVE THIS COMPLAINT**

- 14** The First Plaintiff submitted that all attempts to resolve this complaint amicably had failed:
- 14.1** The Respondent failed to cooperate with the First Plaintiff,
- 14.2** Based on the Respondent’s failure to co-operate with the First Plaintiff, the latter decided to refer this matter to the KZN Consumer Tribunal for adjudication.

### **THE HEARING**

- 15** The hearing was held on 6 September 2023
- 15.1** The hearing was held at the Durban Bay House Offices of the KwaZulu-Natal Department of Economic Development Tourism and Environmental Affairs (EDTEA).
- 15.2** The Respondent had not formally indicated their intention to defend the matter, nor did they attend the hearing.
- 15.3** At the hearing, the First Plaintiff and the Second Plaintiff confirmed the details of the complaint as contained under the background above.

### **APPLICABLE SECTIONS OF THE CONSUMER PROTECTION ACT 68 of 2008**

## 16 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*

## 17 Section 47 (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.*

## CONSIDERATION OF THE EVIDENCE BEFORE THE TRIBUNAL

**18** It is common cause that the parties entered into an agreement of contract in terms of which the Defendant, undertook to repair the roof and replace the waterproofing of the Second Plaintiff's home.

**18.1** The Second Plaintiff in making payment of the amount of R11 000.00 to the Defendant had a reasonable expectation that the Defendant would deliver a quality repaired roof. It was solely based on these repeated misrepresentations that the Second Plaintiff entered into the agreement with the Defendant;

- 18.2** As the Defendant having been properly served failed to appear before the Tribunal, the Tribunal is forced to infer his version solely from the Defendant's email dated 18<sup>th</sup> of April 2023 to the Second Plaintiff where the Defendant states

*".....u called me when I was busy with a client n u stated that u  
dn't think we should go on with the job. The materials bought is of no use  
to me as I buy according to the job . My office will sort out all our cost  
before we give you a total .Thank you"*

- 18.3** The Tribunal therefore infers from this email that the Defendant accepts the work not done and he intended to refund some part of the purchase price to the Second Plaintiff .

- 18.4** The Tribunal turns to the issue of the intended deduction for the cost of the materials the Defendant purchased. The Defendant has not placed such evidence before the Tribunal and cannot reasonably expect the Tribunal to allow any deductions where the Defendant failed since the 18<sup>th</sup> April 2023 to demonstrate to the Second Plaintiff or for that matter to the Tribunal the nature of these deductions. The Defendant therefore the architect of his own misfortune in this case.

## **19 ORDER**

*The Tribunal grants the order against the Defendant in the following terms:*

- 19.1** The Defendant's conduct is declared prohibited conduct in contravention of section 19 and section 47(3) of the Consumer Protection Act 68 of 2008
- 19.2** The Defendant is ordered to refund the Second Plaintiff the full amount of R11 000,00 (Eleven Thousand Rand) being the total amount paid by the Second Plaintiff to the Defendant;
- 19.3** The Defendant is ordered to pay interest on R11 000,00 at the rate of 11.25% with effect from 10 April 2023 ;
- 19.4** The Defendant is ordered to remove his material and equipment from the Second Plaintiff's residence within seven days after this judgement is granted

- 19.5** The Defendant is ordered to make payment of all of the above payments within 15 days of the judgment to the Second Plaintiff's bank account.
- 19.6** The Defendant is ordered to refrain from conducting future business in a manner that is inappropriate

**DATED ON THIS 14 TH SEPTEMBER DAY OF 2023**



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**Mrs P Dabideen**

**Prof B Dumisa (Chairperson) and Ms. A. Sewpersad (Member and Alternate Deputy Chairperson) (Member) concurred.**