

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

Case Number: KZNCT16/2023

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

THULANI PATRICK MCHUNU

SECOND PLAINTIFF

(Name of the Consumer)

and

ZAINES PANEL SHOP AND MECHANICAL SERVICES

DEFENDANT

Registration Number 2016/309879/07

Coram:

Prof B. Dumisa	–	Chairperson & Presiding Member
Ms P. Dabideen	–	Member
Adv R Hand	–	Member

Date of Hearing	–	20 SEPTEMBER 2023
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Date of Judgment	–	12 October 2023
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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 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 THANDEKA MAKHATINI**, 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 **THULANI PATRICK MCHUNU**, a major female, who is the resident of Ezakheni, Ladysmith, 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 11th of August 2023
7. At the hearing, the Second Plaintiff represented himself.

RESPONDENT

8. The Respondent is **ZAINES PANEL SHOP AND MECHANICAL SERVICES**, with Company Registration Number 2016 /309879/07, with its principal place of business situated at 37-39 Lyell Street Ladysmith 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 on a default basis.

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 21 of 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 4, Section 15, Section 54, Section 65(2)(b)(c) and Section 67(1) of the Consumer Protection Act 68 of 2008
 - 11.2 Directing the Respondent to refund the Second Plaintiff the full amount of R41 773,00 (Forty-One Thousand Seven Hundred And Seventy-Three Rand) being the total amount paid by the Second Plaintiff to the Defendant;
 - 11.3 Directing the Defendant to pay interest at the prescribed rate a tempore morae;
 - 11.4 The Second Plaintiff is directed within seven calendar days of granting of this order to collect the car from the premises of the Defendant
 - 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 Directing the Defendant to pay an administrative penalty and / or making any other appropriate order contemplated under section 4(2)(b)(ii) of the CPA
 - 11.8 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 sought to replace the engine of his NKR 46195 Chevrolet Cruze motor vehicle(hereinafter referred to as the “ vehicle”)
 - 13.2 On or about the 15th March 2023 the Second Plaintiff and Defendant entered into an agreement and the material terms of which were as follows :
 - 13.2.1 The Defendant would replace an engine in the motor vehicle as of the Second Plaintiff at a total cost of R41 773,00 (Forty-One Thousand Seven Hundred And Seventy-Three Rand) inclusive of labour.
 - 13.2.2 The Defendant undertook to complete the work within two (2) to three (3) days of receipt of the vehicle.
 - 13.2.3 The Second Plaintiff accepted the quotation and duly paid the Defendant an amount of R41 773,00 (Forty-One Thousand Seven Hundred And Seventy-Three Rand) by 28th March 2023. It is important to note that there are minor differences between the Quotation of R41 773,00 that the Second Plaintiff says he was quoted by the Defendant, and the actual quote of R41774.33 which appears on the copy of the quotation as submitted by the Second Plaintiff, and the actual total amount of R41 780.00 that the Second Plaintiff alleges he paid to the Defendant. However, for the sake of consistency, we will simply accept R41 773,00 as the amount paid to the Defendant.
 - 13.3 Shortly after 28 March 2023 the Second Plaintiff duly delivered his vehicle to the Defendant who despite undertaking to attend to the replacement of the engine in two(2) to three (3) days has to date of this judgement not returned the vehicle nor has he afforded the Second Plaintiff an explanation of the reason for the delay.

- 13.4 The Second Plaintiff illustrated his various attempts to appeal to the Defendant both telephonically and via WhatsApp to complete the repair and return the vehicle to the Second Plaintiff but the Defendant failed to do so.
- 13.5 On the 11 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 cooperate with the First Plaintiff, the latter decided to refer this matter to the KZN Consumer Tribunal for adjudication.

THE HEARING

- 14.3 The hearing was held on 20 September 2023
- 14.4 The Hearing was held both physically and virtually at and via 73 Murchison Street, Ladysmith at the Consumer Tribunal Offices at Department of Economic Development Tourism and Environmental Affairs (EDTEA).
- 14.5 The Respondent had not formally indicated their intention to defend the matter, nor did they attend the hearing.
- 14.6 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

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 case of delivery of goods; or

16 Section 54

Consumer's rights to demand quality service

(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; 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 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.

17 Section 67

Return of parts and materials

(1) When a supplier is authorised to perform any service to any goods or property belonging to or ordinarily under the control of the consumer, the supplier must—

(a) retain any parts or components removed from any goods or property in the course of any repair or maintenance work;

(b) keep those parts or components separate from parts removed from other goods or property; and

(c) return those parts or components to the consumer in a reasonably clean container, unless the consumer declined the return of any such parts or material

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 replace the engine of the motor vehicle of the Second Plaintiff at a cost of R41 733,00.
- 18.1 The Second Plaintiff in accepting the quotation made payment of the amount of R41 773,00 to the Defendant
- 18.2 The Second Plaintiff had a reasonable expectation that the Defendant would complete the installation /or repair as per the Defendant's undertaking within two or three days of the Second Plaintiff delivering the vehicle to the Defendant.
- 18.3 It was solely based on these misrepresentations that the Second Plaintiff entered into the agreement with the Defendant;
- 18.4 The Tribunal must therefore take cognisance of the various WhatsApp messages sent by Defendant to the Second Plaintiff where the Defendant appeared to be constantly shifting the delivery dates for the return of the vehicle to the Second Plaintiff in fact the Tribunal is left with no other presumption but that to date, the vehicle is not repaired and this is some six months later. Neither the Tribunal nor the Second Plaintiff have been afforded an explanation for the delay.
- 18.5 The Tribunal is therefore forced to conclude with no other alternative explanation from the Defendant that the Defendant is incapable of completing this repair and/or installation and that this type of conduct of the Defendant is a contemptuous disregard of the Second Plaintiffs rights and such conduct is tantamount to prohibited conduct as envisaged in the CPA”.

19 **ORDER**

The Tribunal therefore grants an order against the Defendant in the following terms:

- 20.1 The Defendant's conduct is declared prohibited conduct in contravention of section 19 and section 54(1)(a) of the Consumer Protection Act 68 of 2008
- 20.2 The Defendant is ordered to refrain from conducting itself in such a manner henceforth.
- 20.3 The Defendant is ordered to refund the Second Plaintiff the full amount **R41 773,00** Forty Three Thousand Seven Hundred And Thirty Three Rand) being the total amount paid by the Second Plaintiff to the Defendant;
- 20.4 The Defendant is ordered to pay interest on R41 773,00 at the rate of 11.75% from 28 March 2023 to the date of payment both days inclusive ;
- 20.5 The Defendant is ordered to make payment in respect of 20.3 and 20.4 within **15** days of the grant of this order to the Second Plaintiff into the Second Plaintiff's Bank Account as follows :

BANK NAME : CAPITEC

ACCOUNT NAME : TP MCHUNU

ACCOUNT NUMBER : 2183908870

Reference : KZNCT16/2023 ZAINES PANEL SHOP AND MECHANICAL SERVICES

20.6 The Defendant is ordered to restore the vehicle to the condition in which it was delivered to Defendant by the Second Plaintiff as at 28th March 2023 and to release the vehicle into the custody of the Second Plaintiff or his duly appointed agent within seven days of the grant of this order.

20.7 The Defendant is ordered to pay an administrative penalty of R50 000.00 (Fifty Thousand Rand only) within sixty (60) days of this judgement 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 : KZNCT16/2023 ZAINES PANEL SHOP AND MECHANICAL SERVICES

20.8 The Defendant is warned henceforth to refrain from conducting future business in the manner that is the subject matter of this complaint and that is in contravention of the CPA

DATED ON THIS 11TH DAY OF OCTOBER 2023



Mrs P Dabideen
Chairperson

Prof B Dumisa(Chairperson) and Adv R Hand (Member) concurred.