

IN THE KWAZULU-NATAL CONSUMER TRIBUNAL
HELD AT DURBAN

CASE NO: KZNCT18/2023

In the matter between:

KWAZULU-NATAL CONSUMER PROTECTOR

1ST PLAINTIFF

ABEY RASEPAE

2ND PLAINTIFF

And

SUNTIDE POOL SERVICES

1ST DEFENDANT

(REG NO: 2020188010)

JEREMY MOONSAMY

2ND DEFENDANT

JUDGMENT AND REASONS

Coram:

Ms. A. Sewpersad Alternate Deputy Chairperson & Presiding Member

Ms. P. Dabideen Member

Adv. R. Hand Member

Date of Hearing 11 December 2023

Date of Judgement 14 December 2023

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 Plaintiff's Investigation Report was deposed to by **YOGANDHRIE GANESH**, (aka Susan Ganesh) 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 **ABEY RASEPAE**, a major male who is a resident of Athlone Park, 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 First and Second Defendant on the 25th of July 2023.
7. At the hearing, the Second Plaintiff represented himself.

DEFENDANTS

8. The First Defendant is **SUNTIDE POOL SERVICES**, with Company Registration number 2020/1880/10, with its principal place of business situated at 24 Gopalsing Road, Isipingo Rail, Durban, KwaZulu-Natal which address it has chosen as its domicillium citandi et executandi (hereinafter referred to as "the First Defendant").
9. The Second Defendant is **JEREMY MOONSAMY**, the Director of Suntide Pool Services, a major male who is a resident of Isipingo Rail, Durban, KwaZulu-Natal (hereinafter referred to as "the Second Defendant."
10. The Defendants did not attend despite being properly notified to attend the hearing. The Tribunal was satisfied that the Defendants were aware of the matter proceedings 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

11. This KZN Consumer Tribunal (hereinafter referred to as "the Tribunal) derives the jurisdiction for hearing this matter under Section 10 and Section 21 of the KwaZulu-Natal Consumer Protection Act,4 of 2013(the KZNCPA). This matter is in terms of Section 19 and Section 47(3) of the Consumer Protection Act 68 of 2008. (the CPA)
12. The Second Plaintiff sought an order against the First and Second Defendant in the following terms:
 - 12.1.The First and Second Defendant's Conduct is declared prohibited conduct in contravention of Section 19 and Section 47(3) of the Consumer Protection Act 68 of 2008.
 - 12.2.Directing the First and Second Defendants to refund the Second Plaintiff in the sum of R12 500-00 Twelve Thousand and Five Hundred Rands) being the total amount paid by the Second Plaintiff to the Defendants.
 - 12.3.Directing the First and Second Defendants to pay interest at the prescribed rate a tempore morae.

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12.4.To order the First and Second Defendants to pay the above amount within 15 days of the judgment, to the Second Plaintiff's bank account.

12.5.Directing the First and Second Defendants to refrain from conducting future business in a manner that is inappropriate and to make any other order that the Consumer Tribunal deems necessary.

12.6.Further and/or alternative relief.

MATTERS TO BE DECIDED

13. The Tribunal has to decide whether:

13.1.The Defendants breached the provisions of the Act as alleged; and

13.2.The appropriate relief to be granted.

BACKGROUND

14. The Second Plaintiff submitted as follows:

14.1.On or about May 2023 he contacted the Second Defendant, Jeremy Moonsamy, the owner of Suntide Pool Services to repair his household pool. The Second Defendant (hereinafter referred to as Jeremy Moonsamy) advised him that it would take approximately one week for the work to be completed. He advised that a fifty percent deposit was required and thereafter the balance would be paid on completion of the work.

14.2.On the 15th of June 2023 he paid an amount of R12 500-00(Twelve Thousand and Five Hundred Rands), into the Second Defendant's bank account as the requested deposit.¹

14.3.On two occasions, Jeremy arrived at his house along with two of his employees to assess the pool. The commencement of the repair began with some cement plaster on the walls of the pool which is all cracking

¹ Annexure "AR1"

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at this point. He contacted Jeremy telephonically, but he would not answer his calls. Jeremy further blocked him on the WhatsApp messaging communication platform.

14.4. He tried contacting Jeremy Moonsamy on many occasions, but all attempts have failed.

14.5. He lodged a complaint against the First and Second Defendants on the 25th of July 2023 with the KwaZulu-Natal Consumer Protector, Susan Ganesh, the Investigator handling his case attempted to investigate the complaint but Jeremy refused to participate in the investigation by attending a meeting with him as recommended by the Investigator. Furthermore, he failed to respond favorably by providing a date for the refund.²

THE FIRST PLAINTIFF'S ATTEMPTS TO RESOLVE THE COMPLAINT

15. The First Plaintiff submitted that all attempts to resolve this complaint amicably had failed:

15.1. The Defendant failed to cooperate with the First Plaintiff.

15.2. Based on the Defendant's failure to cooperate with the First Plaintiff, the latter decided to refer the matter to the KZN Consumer Tribunal for adjudication.

THE HEARING

16. The hearing was held on 11th of December 2023 at the EDTEA offices at Bay House, 333 Anton Lembede Street, Durban, KwaZulu-Natal.

17. The Defendant did not file any intention to defend the matter and failed to attend the hearing.

18. 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

² Annexure "AR2"

19. Section 19

Consumer's right with respect to delivery of goods or supply of services

- "(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*

20. Section 47

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 service of the same or better quality, class or nature, the supplier must-*
- (a) *refund 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

21. It is common cause that the parties entered into an agreement of contract in terms of which the Defendant undertook to repair the Second Plaintiff's household pool. The term of the agreement was that a fifty percent deposit of R12 500-00(Twelve Thousand and Five Hundred Rands) was required and that it would take approximately one week for the work to be completed and the Second Plaintiff paid the sum of R12 500-00(Twelve Thousand and Five Hundred Rands) on 15 June 2023.
22. The Second Plaintiff paid the deposit of R12 500-00 (Twelve Thousand and Five Hundred Rands into an account belonging to Jeremy Moonsamy.
23. The Second Plaintiff had a reasonable expectation that the repairs to the pool would be effected within one week as undertaken by the Second Plaintiff.
24. Based on the Second Plaintiff's testimony and in the absence of a version to the contrary the Second Plaintiff's unchallenged version is accepted.
25. The Second Defendant in his conduct has demonstrated that he has no intention to undertake the repairs to the Second Plaintiff's household pool as agreed. The Second Defendant's conduct is a contemptuous disregard of the Second Plaintiff's rights, and such his conduct is tantamount to prohibited conduct as envisaged in the "CPA."
26. Given the conduct of the Second Defendant in this matter and the attitude displayed towards the Second Plaintiff in not attending to the repairs as agreed, in not cooperating with the Office of the Consumer Protector by not agreeing to meet with the Second Plaintiff to resolve the matter amicably and in not refunding monies he undertook to refund, the Tribunal is of the opinion that an administrative penalty should be imposed. This will serve as a deterrent to offenders who may be contemplating shoddy services to consumers.

ORDER

27. Accordingly, the Tribunal grants an order against the First and Second Defendants in the following terms:

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27.1. The First and Second Defendant's conduct is declared prohibited conduct in contravention of section 19(2)(a)(i) and section 47(3) of the Consumer Protection Act No. 68 of 2008.

27.2. The Defendants are ordered to refrain from conducting themselves in such a manner forthwith.

27.3. The First and Second Defendants are jointly and severally liable the one paying the other to be absolved for the refund to the Second Plaintiff of the sum of R12 500-00 (Twelve Thousand and Five Hundred Rands) being the total amount paid by the Second Plaintiff

27.4. The First and Second Defendants are ordered to pay interest on R12 500-00 at the rate of 11.75% p.a from 13 July 2023 to the date of payment both days inclusive.

27.5. The First and Second Defendant are ordered to make payment in respect of 27.3 and 27.4. within 15 days of the granting of this Order to the Second Plaintiff into the Second Plaintiff's Bank Account as follows:

BANK NAME : ABEY RASEPAE
ACCOUNT NAME : 2923444493
ACCOUNT NUMBER : 198765
REFERENCE : KZNCT18/2023 SUNTIDE POOL SERVICES

27.6. The Defendants are ordered to pay an administrative penalty of R25 000-00 (Twenty-Five Thousand Rands) within 30 days of this judgment 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 : CURRENT ACCOUNT
ACCOUNT NO : 40 7248 4412
BRANCH NAME : ABSA BUSINESS CENTRE-KZN
BRANCH CODE : 630495
REF : KZNCT 18/2023 SUNTIDE POOL SERVICES

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27.7. The First and Second Defendants are forthwith warned 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.



Ms. A. Sewpersad

Alternate Deputy Chairperson

Ms. P. Dabideen (Member) and Adv. R. Hand (Member) concurred.