

IN THE KWAZULU-NATAL CONSUMER TRIBUNAL

HELD AT DURBAN

CASE NO: KZNCT14 /2024

In the matter between:

KWAZULU-NATAL CONSUMER PROTECTOR

1ST PLAINTIFF

SHAUN SOOKLALL

2ND PLAINTIFF

And

PRIVATE PROPERTY SOLUTIONS & MAINTENANCE

1ST DEFENDANT

KISHAAN MAHARAJ

2ND DEFENDANT

JUDGMENT

Coram:

Prof Bonke Dumisa Chairperson & Presiding Member

Adv. N. Nursoo Member

Ms. A. Sewpersad Member

Date of Hearing 23 September 2024

Date of Judgement 7 November 2024

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-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 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 **MS. VANESSA SHABANGU** an Assistant Director, a Complaints Handler within the Office of the KwaZulu-Natal Consumer Protector, at its offices at the uMzinyathi District Office, in the Province of KwaZulu-Natal.

SECOND PLAINTIFF

5. The Consumer, who is the Second Plaintiff in this matter is **SHAUN SOOKLALL**, a major male who resides in the Effingham Heights Area, Durban, 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 23rd June 2024.
7. At the hearing, the Second Plaintiff represented himself.

DEFENDANTS

8. The First Defendant is **PRIVATE PROPERTY SOLUTIONS & MAINTENANCE**, a business, with its principal place of business situated at Hylo Circle, Parlock, Durban, KwaZulu-Natal which address it has chosen as its domicilium citandi et executandi (hereinafter referred to as "the First Defendant").

9. The Second Defendant is **KISHAAN MAHARAJ**, who is the sole owner of the First Defendant.

(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 proceeding and that it was entitled to proceed with the matter and hence the matter was heard by default.

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 Defendant's Conduct is declared prohibited conduct in contravention of S19 and S47(3) of the Consumer Protection Act 68 of 2008.

12.2.To refund to the Second Plaintiff the amount of R31 000-00(thirty-one thousand rand only) being the total amount paid to the Defendants by the Second Plaintiff,

12.3.Interest on the amount referred to in in(ii) above at the mora rate in terms of Prescribed Rate of Interest Act 53 of 1975;

12.4.The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled.

12.5.To order the Defendants to make all the above payments within 15 days of the judgment to the Second Plaintiff's bank account.

12.6.Directing the Defendants to refrain from conducting future business in a manner that amounts to prohibited conduct.

12.7.Directing the Defendants to pay an administrative penalty and/or making any other appropriate order contemplated under section 4(2)b)(ii) of the CPA.

12.8.Further and/or alternative relief.

MATTERS TO BE DECIDED

13. The Tribunal must decide whether:-

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

13.2.The appropriate relief to be awarded/

BACKGROUND

14. The Second Plaintiff submitted as follows:-

14.1.On or about 3 April 2024, he entered into an agreement with the Defendants for the manufacturing and installation of cupboards, after the Second Defendant's wife had shared that her husband conducts business that manufactures cupboards. He was provided with a quotation for R42 000-00(forty-two thousand rands) for the installation of cupboards at his residence, pursuant to an inspection being conducted at his house by the Second Defendant.¹

14.2.He subsequently paid a deposit of R31 000-0(thirty-one thousand rands) by EFT to the Second Defendants Tyme bank account, the details of which had been forwarded to him via WhatsApp and which was also reflected on the invoice provided by the Second Defendant.²

14.3.During April 2024 he communicated with the Second Defendant regarding the cupboards and on 19 April 2024 he sent a text enquiring when the cupboards would be delivered. He did not receive any communication, and the Second Defendant thereafter stopped taking his calls or responding to his text messages.³

14.4.He continued making telephone calls and sending text messages to the Second Defendant who refused to respond, and he had no other option but to go to the South African Police Services to report the Second Defendant's behaviour, however, this attempt, however, proved fruitless.

¹ Invoice dated 3 April 2024 marked SS1

² Copies of Communication marked SS2

³ Copies of communication marked SS3

14.5. He gave the Defendants some time to comply but then realized that the Second Defendant was not committed to perform so he then approached the Office of the Consumer Protector on 26th June 2024 and lodged a formal complaint.⁴

14.6. Despite numerous communications made to the Defendants, they have failed to deliver the cupboards as per the agreement.

14.7. The relief which he seeks from the Consumer Tribunal is a full refund of the deposit paid and an order seeking the Defendants to refrain from engaging in prohibiting conduct in the future.

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 Defendants 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 this matter to the KZN Consumer Tribunal for adjudication.

THE HEARING

16. The matter was set down for hearing on 23 September 2024 at 09:00am at the offices of the Consumer Protector, 1st Floor Marine Building, Dorothy Nyembe Street, Durban, Kwazulu-Natal. The Defendants had not filed any notice of Intention to Defend the matter, nor did they attend the hearing.

APPLICABLE SECTIONS OF THE CONSUMER PROTECTION ACT

17. **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 and services that-*

⁴ Complaint Form marked SS4

- (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;*

18. Section 54

Consumer's rights to demand quality service

- (1) *When a supplier undertakes to perform any service 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.*

19. Section 65

- (3) *When a supplier has possession of any prepayment, deposit, membership fee, or the 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 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*

CONSIDERATION OF THE EVIDENCE BEFORE THE TRIBUNAL

20. It is common cause that on 3 April 2024, the parties entered into an agreement of contract in terms of which the Defendants undertook to manufacture and install cupboards at the Second Plaintiff's residence at a total cost of R42 000-00(fort two thousand rands) and the Second Defendant in accepting the quotation paid a deposit of R32 000-00(thirty-two thousand rands) to the Defendants.
21. The Second Plaintiff had a reasonable expectation that the cupboards would be manufactured as per the quotation furnished.
22. Despite numerous attempts to contact the Defendants to comply with the agreement , the Defendant failed to manufacture and supply the cupboards as agreed.
23. In the absence of any version to the contrary the Second Defendant's unchallenged evidence is accepted, and the Tribunal finds the Defendants' conduct is tantamount to prohibited conduct as envisaged in the Consumer Protection Act and the Second Plaintiff is entitled to the relief which he seeks.
24. Given the conduct of the First and Second Defendant in this matter and the attitude displayed towards the Second Plaintiff in failing to comply with the terms and conditions of the agreement, despite having received the deposit as requested, and in not cooperating with the Office of the Consumer Protector and not responding to the summons, the Tribunal is of the view that it is appropriate that an administrative be imposed. This would serve as a deterrent to would be offenders who may be contemplating shoddy services to consumers.

ORDER

- 23.The Tribunal therefore grants an Order against the First and Second Defendants in the following terms:

- 23.1.The First and Second Defendants 'conduct is declared prohibited conduct in contravention of S19 & 47(3) of the Consumer Protection Act 68 of 2008.

23.2. The Defendants are ordered to forthwith refrain from conducting future business in a manner that is the subject matter of this complaint and that is in contravention of the CPA.

23.3. 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 amount of R32 000-00(thirty-two thousand rands) being the deposit paid to the Defendants by the Second Plaintiff.

23.4. The First and Second Defendants are ordered to pay interest on the amount referred to in (23.2) above at the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975.

23.5. The First and Second Defendants are ordered to make payment in respect of paragraphs 23.3 and 23.4 within 15 days of the granting of this Order, into the Second Plaintiff's Account as follows:

BANK NAME	:FIRST NATIONAL BANK
ACCOUNT NAME	:MR SHAUN SOOKLALL
ACCOUNT TYPE	:FNB FUSION PREMIER ACCOUNT
ACCOUNT NO	:623 522 93436
BRANCH CODE	:220426

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23.6. The First and Second Defendants being jointly and severally liable the one paying the other to be absolved are ordered to pay an administrative penalty of R20 000-00(twenty thousand rands) within 30 days of this judgment to the bank account of the KwaZulu-Natal Provincial Revenue Fund, the details of which are as follows:

BANK NAME	: ABSA
ACCOUNT NAME	: KZN PROV-GOV -TREASURY
ACCOUNT TYPE	: CHEQUE ACCOUNT
ACCOUNT NO	: 40 7248 4412
BRANCH NAME	: ABSA BUSINESS CENTRE-KZN
BRANCH CODE	: 630495
REF	: KZNCT14/2024/SHAUN SOOKLALL v KISHAN MAHARAJ



MISS A. SEWPERSAD

ALTERNATIVE DEPUTY CHAIRPERSON

Prof B. Dumisa(Chairperson) and Adv. N. Nursoo (Member) concurred.