

IN THE KWAZULU NATAL CONSUMER TRIBUNAL

HELD VIRTUALLY

Case Number: KZNCT07/2024

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

SITHABISO MASONDO

SECOND PLAINTIFF

(Name of the Consumer)

and

DELZAI TRADING (PTY) LTD trading as

ZAINES PANEL SHOP AND MECHANICAL SERVICES

FIRST DEFENDANT

Registration Number 2016/309879/07

ZAINE VAN NIEKERK

SECOND DEFENDANT

Coram:

Prof B. Dumisa – Chairperson & Presiding Member

Mrs P Dabideen – Member

Adv R Hand – Member

Date of Hearing – 11 JULY 2024

Date of Judgment – 22 JULY 2024

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 Plaintiff's 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 **SITHABISO MASONDO**, a major male, who is the resident of Rosepark, 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 10th of June 2024
7. At the hearing, the Second Plaintiff represented himself.

DEFENDANTS

8. The First Defendant 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 (hereinafter referred to as "the Respondent").

9. The Second Defendant is **ZAINE VAN NIEKERK**, the owner of the first Defendant.
10. The Defendant's 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 on a default basis.
11. The Defendants can be regarded as serial consumer abusers, as this is the second matter to be heard by the KwaZulu-Natal Consumer Tribunal where the Defendant is accused of engaging in prohibited conduct. Worse still, they have not as yet complied with the Order issued in the year 2022; hence the First Plaintiff is working through the Courts of Law to enforce the Defendants' compliance with the Tribunal Order.

APPLICATION TYPE AND ORDER SOUGHT

12. 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 S67(1), of the Consumer Protection Act No 68 of 2008 (the CPA).
13. The Second Plaintiff sought an order against the Respondent in the following terms:
 - 13.1 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;
 - 13.2 Directing the Defendant's to refund the Second Plaintiff the full amount of R70 000,00 (Seventy Thousand Rand only) being the total amount paid by the Second Plaintiff to the Defendant;
 - 13.3 Directing the Defendant's to pay interest at the prescribed rate a tempore morae, in terms of the Prescribed Rate of Interest Act 53 of 1975;
 - 13.4 To order the Defendant's to pay all the above payments within 15 days of the judgment to the Second Plaintiff's bank account;

- 13.5 To order the Defendant's to make the vehicle with description **Audi A5 with registration number DY09LY (the vehicle)** belonging to the plaintiff available immediately or for period to be determined by the Consumer Tribunal;
- 13.6 The Second Plaintiff must, within the time specified by the Consumer Tribunal, collect the car from the Defendant's premises in the condition it was at the time it was towed there accompanied by the South African Police Services, SAPS, or the Sheriff of the Court;
- 13.7 Directing the Defendant's to refrain from conducting future business in a manner that is inappropriate and to make any other order that the Consumer Tribunal deems necessary;
- 13.8 Directing the Defendant's to pay an administrative penalty and / or making any other appropriate order contemplated under section 4(2)(b)(ii) of the CPA; and
- 13.9 Any further and/or alternate relief.

MATTERS TO BE DECIDED

14. The Tribunal must decide whether;
 - 14.1 The Defendant's breached the provisions of the Act as alleged; and
 - 14.2 The appropriate relief is to be granted.

BACKGROUND

15. The Second Plaintiff submitted as follows:
 - 15.1 On or about 24th of March 2022 the Second Plaintiff had his vehicle **Audi A5 with registration number DY09LY** (hereinafter referred to as the " vehicle") towed to the Defendant's premises for repair work, including panel beating, after it was damaged in a motor car accident;

15.2 The Defendant's quoted the Second Plaintiff an amount of R83 456.32 (Eighty Three Thousand Four Hundred and Fifty Six Rand and Thirty Two Cents). The Defendants insisted on the payment of at least half of the amount quoted being paid upfront, before the work commenced;

15.3 The Defendant's clearly indicated to the Second Plaintiff that the repair work will take no longer than three months to complete. It is against this background that the Second Plaintiff made a total payment of R70 000.00 (Seventy Thousand Rand), broken down as follows:

- 15.3.1 On the 31st of March 2022 he paid a deposit of R50 000.00 (Fifty Thousand Rand);
- 15.3.2 He later followed this up with a further payment of R1000.00 (One Thousand Rand) via e-wallet;
- 15.3.3 His wife deposited another R10 000.00 (Ten Thousand Rand);
- 15.3.4 The final amount of R9 000.00 (Nine Thousand Rand) was made in and around the 1st of November 2022;
- 15.3.5 Three months after leaving his vehicle at the Defendant's premises for repair work; during the month of July 2022, he visited the Defendant's business to inspect the work already done on the car. He discovered that no work had been done yet on the car, despite the Defendant's initial assurances that the car repairs would have been completed within three months;
- 15.3.6 The Second Plaintiff later made numerous attempts to appeal to the Defendant's both physically, telephonically and via WhatsApp to complete the repair and return the vehicle to the Second Plaintiff but the Defendant's failed to do so. The Defendant's always had many excuses for why the work had not been done. The Defendant's ultimately just stopped taking the Second Plaintiff's calls and restricted the Second Plaintiff's visits to the Defendant's premises; and
- 15.3.7 On the 7th of March 2024, the Second Plaintiff finally decided to officially lodge this complaint with the First Plaintiff.

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT

16. The First Plaintiff submitted that all attempts to resolve this complaint amicably had failed:
 - 16.1 The Respondent failed to cooperate with the First Plaintiff; and
 - 16.2 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

17. The hearing was virtually held on the 11th of July 2024.

17.1 The matter was heard on a default basis;

17.2 The Respondent had not formally indicated their intention to defend the matter, nor did they attend the hearing; and

17.3 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

18. 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*

19. 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.*

20. 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

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 vehicle at a cost of R83 456.32 (Eighty-Three Thousand Four Hundred and Fifty-Six Rand and Thirty-Two Cents).

21.1 The Second Plaintiff in accepting the quotation made payments to the total amount of R70 000.00 (Seventy Thousand Rand Only) to the Defendant's;

21.2 The Second Plaintiff had a reasonable expectation that the Defendant's would complete the vehicle repair works within three months, as per the Defendant's undertakings;

21.3 It was solely based on these misrepresentations that the Second Plaintiff entered into the agreement with the Defendant.

22. Submissions by the Second Plaintiff and further investigations by Ms Thandeka Makhathini of the Ladysmith Office of the Consumer Protector clearly demonstrated that the Defendant's were not

interested in repairing the Second Plaintiff's car. In dealing with this issue, the Tribunal will need to take into consideration several relevant factors:

- 22.1 The Defendants are repeat wrongdoers, serial consumer abusers. They behaved in the same way in an earlier case, KZNCT16/2023 Thulani Patric Mchunu v Zaine's Panel Shop and Mechanical Services, which was decided in October 2023. The Defendants were found to have engaged in prohibited conduct. They were ordered to refund the Second Plaintiff in that case; and also ordered to pay an administrative fine. THEY HAVE NOT YET COMPLIED WITH THAT ORDER. The matter of enforcing compliance has now been escalated to the Courts of Law and the Sheriff of the Court;
- 22.2 Given the fact that the Defendants have total disrespect and disregard for the KZN Consumer Tribunal processes, whatever ORDER the Tribunal will make on this case must seriously take into consideration the fact that consumer abusers must not be allowed to abuse consumers with impunity;
- 22.3 A formal database of all the consumer abusers must be created where the names of businesses, the names of those owners of those businesses, and the physical geographic locations of those businesses must be recorded; and
- 22.4 Given the fact that the Defendants showed both the Second Plaintiff and the Office of the Consumer Protector complete reckless contemptuous disregard and disrespect when efforts were being made to give the Second Plaintiff necessary redress, the Tribunal therefore concludes that the Defendant had and still has absolutely no intention to effect the necessary repairs to the Second Plaintiff's vehicle.

23. ORDER

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

- 23.1 The Defendants' conduct is declared prohibited conduct in contravention of section 19 and section 54(1)(a) of the Consumer Protection Act 68 of 2008;
- 23.2 The Defendant is ordered to refrain from conducting itself in such a manner henceforth;

23.3 The Defendant is ordered to refund the Second Plaintiff the full amount **R70 000,00** (Seventy Thousand Rand) being the total amount paid by the Second Plaintiff to the Defendants;

23.4 The Defendants are ordered to pay interest on R70 000,00 at the rate of 11.75% from 01 November 2022 to the date of payment both days inclusive; and

23.5 The Defendants are 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 : Mr S Masondo

ACCOUNT NUMBER : 1705684732

Reference : KZNCT07/2024 ZAINES PANEL SHOP AND MECHANICAL SERVICES

23.6 The Defendants are ordered to restore the vehicle to the condition in which it was delivered to Defendant's 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;

23.7 The Defendants are ordered to pay an administrative penalty of R60 000.00 (Sixty 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 : KZNCT07/2024 ZAINES PANEL SHOP AND MECHANICAL SERVICES

23.8 The Defendants are 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 ;

23.9 The Defendants are repeat wrongdoers, serial consumer abusers, who were previously found by this KZN Consumer Tribunal to have engaged in prohibited conduct and deliberately failed to comply with the ORDER of this Tribunal. It is on this basis that the First Plaintiff is ordered to record this Defendant's name and other details in the list of adverse notations to be maintained and kept by their Office. The Office must record the name of the business, the name of the person conducting such business and the finding of a Consumer Tribunal in respect of subsection 2(a), (b), and (c) made in terms of S10(f) of the KwaZulu-Natal Consumer Protection Act 04 of 2013.

DATED ON THIS 22nd DAY OF JULY 2024

Prof B Dumisa
Chairperson and Presiding Member

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