

IN THE KWAZULU NATAL CONSUMER TRIBUNAL

HELD IN DURBAN

Case Number: KZNCT18/2024

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

DR OSMAN ABOO

SECOND PLAINTIFF

and

EVENTS BY NASRIN

FIRST DEFENDANT

NASRIN PATEL

SECOND DEFENDANT

Coram:

Ms. A. Sewpersad – Alternate Deputy Chairperson & Presiding Member

Adv. N. Nursoo – Member

Ms. P. Dabideen – Member

Date of Hearing – 6 February 2025

Date of Judgment – 21 February 2025

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 deposited to by **Ms VANESSA SHABANGU**, 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.

This may be a typographical error

SECOND PLAINTIFF

5. The Consumer, who is the Second Plaintiff in this matter is **DR OSMAN ABOO**, a major male, who is a resident in Morningside, Durban in the Province of KwaZulu-Natal (hereinafter referred to as "the Second Plaintiff" or "the Consumer").

6. The Second Plaintiff filed the founding affidavit on 29th October 2024.

7. The Second Plaintiff lodged his complaint against the Respondents on 29 October 2024.

8. At the hearing, the Second Plaintiff was represented by Ms.C, Naidoo, a legal practitioner at Dwarika Naidoo and Company.

DEFENDANTS

9. The First Defendant is **EVENTS BY NASRIN**, with its principal place of business situated at 249 Montpelier Road, Windermere, Berea, Durban, in the Province of KwaZulu-Natal (hereinafter referred to as "the First Defendant").

10. The Second Defendant is **NASRIN PATEL**, the owner of the First Defendant.

11. The summons was personally served on the Defendants on 10 December 2024. The Second Defendant contacted the offices of the Consumer Protector with a view to resolving the dispute and offered to settle in monthly instalments and was requested to submit a written offer. A letter of demand was previously sent by the Second Plaintiff's attorneys to the Second Defendant on 1 October 2024 however, there was no payment. The Second Defendant had since the commencement of the dispute offered to settle, however no payments were forthcoming. The Second Defendant contacted the offices

KZN Consumer Protector and Dr Osman Aboo / Events by Nasrin and Nasrin Patel of the Consumer Protector and advised that she would not be attending the hearing and that she stands by her offer. The Tribunal was satisfied that the Defendants were aware of the matter and that the Tribunal was entitled to proceed with the matter on a default basis.

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 17 of the Consumer Protection Act No 68 of 2008 (the CPA).
13. The Second Plaintiff sought an order against the Defendants, jointly and severally, the one paying the other to be absolved, in the following terms:
 - 13.1. The Defendants' conduct is declared prohibited conduct in contravention of S17 of the Consumer Protection Act 68 of 2008;
 - 13.2. To refund the Second Plaintiff the amount of R125 000-00(one hundred and twenty-five thousand rands);
 - 13.3. To pay interest on the amount referred to above, in mora at the rate in terms of the Prescribed Rate of Interest Act 53 of 1975;
 - 13.4. The agreement entered between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled;
 - 13.5. To order the Defendants to pay the above amounts into the Second Plaintiff's bank account within 15 days;
 - 13.6. Directing the Defendants to refrain from conducting future business in a manner that amounts to prohibited conduct;
 - 13.7. 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.
 - 13.8. Further or alternative relief.

MATTERS TO BE DECIDED

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

BACKGROUND

15. The Second Plaintiff submitted as follows:

15.1. In January 2024, his daughter decided to get married, so he contacted Nasrin Patel of Events by Nasrin (First Defendant) and engaged her services to attend to the wedding décor.

15.2. He entered into an oral agreement with Nasrin Patel, the material terms of which were as follows: -

- a) She shall attend to the décor for the wedding on 6th July 2024.
- b) The costs of her services shall be R250 000-00.
- c) A deposit of 50% is payable by 16th January 2024.

15.3. The Second Defendant provided him with an invoice ¹and requested that payment be made into an account, the holder of which was S.A. Patel.²

15.4. On 11th January 2024, he paid the sum of R100 000-00(one hundred thousand rands) from the Osman Aboo Family Trust Account to the Second Defendant³

15.5. On 16th January 2024, he paid the sum of R25 000-00(twenty-five thousand rands) from the Osman Family Trust Account to the Second Defendant ⁴

15.6. The abovementioned Trust loaned him the sum of R125 000-00.⁵

15.7. His daughter changed her mind about getting married and on 5th February 2024, Second Plaintiff, therefore on the same day cancelled the agreement with the Second Defendant, and she undertook to refund the amounts paid.

15.8. On 26th March 2024 the Second Defendant indicated to the Second Plaintiff via WhatsApp that she was working on the payment and that she would sort out something in a few days⁶. Payment was never made despite numerous undertakings made by the Second Defendant.

¹ Annexure A

² Annexure B

³ Annexure C

⁴ Annexure D

⁵ Annexure E

⁶ Annexure F

15.9. As a consequence of the Second Defendant's failure to make payment the Second Plaintiff engaged his present attorneys of record, who on 1st October 2024 and on 4th October 2024 sent a letter of demand to the Second Defendant via email and registered post respectively.⁷

15.10. Notwithstanding the Second Defendant's undertakings and demand by the Second Plaintiff's attorneys, she has failed, refused and/or neglected to pay and the sum of R125 000-00(one hundred and twenty-five thousand rands) plus interest at the prescribed rate of interest to the Second Plaintiff, which is now due, owing and payable.

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT

16. The First Plaintiff submitted that all attempts to resolve this complaint amicably with the Second Defendant have failed and despite having conceded that she owes the sum of R125 000-00(one hundred and twenty-five thousand rands) to the Second Plaintiff, she has failed to make any payments.

THE HEARING

17.1. The hearing was held on the 6th of February 2025 and proceeded by default.

17.2. The Defendants had not formally indicated their intention to defend the matter, nor did they submit an answering affidavit.

17.3. At the hearing, the First Plaintiff and the Second Plaintiff confirmed the details of the complaint as contained under the background above.

17.4. The Second Plaintiff's attorneys requested that a cost order be granted in favour of the Second Plaintiff on an attorney/client scale due to the numerous efforts made by them to recover the refund of the deposit, Ms C. Naidoo submitted that this matter could have been resolved prior to them instituting the application.

17.5 On the 12th February 2025 the Second Plaintiff's attorneys made written submissions to the Tribunal in further support of its application for costs against the Defendants.

⁷ Annexure G

APPLICABLE SECTIONS OF THE CONSUMER PROTECTION ACT 68 of 2008

18. Section 17 of the Consumer Protection Act states as follows: -

"CONSUMERS'RIGHT TO CANCEL ADVANCE RESERVATION, BOOKING ORDER

- (2) *Subject to subsections (3) and (4), a consumer has the right to cancel any advance booking, reservation order for any goods or services to be supplied.*
- (3) *A supplier who makes a commitment or accepts a reservation to supply goods or services on a later day may-*
 - (a) *require payment of a reasonable deposit in advance; and*
 - (b) *impose a reasonable charge for cancellation of the order or reservation, subject to subsection (5).*
- (4) *For the purposes of this section, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to-*
 - (a) *the nature of the goods or services that were reserved or booked;*
 - (b) *the length of notice of cancellation provided by the consumer;*
 - (c) *the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation.*
 - (d) *the general practice of the relevant industry.*
- (5) *A supplier may not impose any cancellation fee in respect of a booking, reservation or order if the consumer is unable to honour the booking, reservation or order because of the death or hospitalisation of the person for whom, or for whose benefit the booking, reservation or order was made."*

CONSIDERATION OF THE EVIDENCE BEFORE THE TRIBUNAL

19. It is common cause that the parties entered into an agreement of contract in terms of which the Defendants undertook to provide the wedding décor for the Second Plaintiff's daughter's wedding on 6 July 2024 and that the Second Plaintiff paid a deposit of R125 000-00(one hundred and twenty-five thousand rands) in respect thereof.

20. It is common cause that the Second Plaintiff cancelled the contract on 5th February 2024, which cancellation was accepted by the Second Defendant, and she undertook to refund the deposit of R125 000-00 (one hundred and twenty-five thousand rands) to the Second Plaintiff.

21. In dealing with this issue, the Tribunal will need to take into consideration several relevant factors:

Second Defendant

(a) The **Second Plaintiff** has since the inception of this dispute acknowledged liability to refund the deposit paid and despite having made undertakings to settle the outstanding amounts has failed to do honour same.

Second Defendant

(b) The **Second Plaintiff** was aware of the hearing proceeding on 6 February 2025 and despite that elected not to attend and indicated that her offer, which was rejected by the Second Plaintiff still stands.

(c) Given the fact that the Defendants have shown total disrespect and disregard for the KZN Consumer Tribunal processes, any order issued by the Tribunal must seriously take into consideration the fact that consumer abusers must not be allowed to abuse consumers with impunity.

(d) 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

(e) 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 refund the deposit paid as she has made numerous undertakings since March 2024 and to date has not effected any payments.

22. The order prayed in this matter as served on the Defendants did not include a prayer for legal costs and in the circumstances the Tribunal makes no order as to costs.

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 17 of the Consumer Protection Act 68 of 2008;
- 23.2. The Defendants are ordered to refrain from conducting itself in such a manner henceforth;
- 23.3. The Defendants are jointly and severally liable, the one paying the other to be absolved and are ordered to refund the Second Plaintiff the amount of R125 000-00(one hundred and twenty-five thousand rands) being the total amount paid to the Second Defendant.
- 23.4. The Defendants are ordered to pay interest on the amount of R125 000-00 at the rate of 11.75% from 11 January 2024 to the date of payment both days inclusive; and
- 23.5. The Defendants are ordered to make payment within 15 days of the granting of this order to the Second Plaintiff's Bank Account as follows:

BANK NAME : NEDBANK

ACCOUNT NAME : OSMAN ABOO FAMILY TRUST

ACCOUNT NUMBER : 9015392565

REFERENCE : KZNCT18/24-DR O. ABOO/EVENTS BY NASRIN

- 23.6. The Defendants are ordered to pay an administrative penalty of R20 000.00 (twenty thousand rands) 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: KZNCT18/2024 Dr O. Aboo/Events by Nasrin

23.7. 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 Consumer Protection Act 68 of 2008.

23.8. There is no order as to costs.

DATED AT DURBAN ON THIS 21ST DAY OF FEBRUARY 2025.



Asha Sewpersad
Alternate Deputy Chairperson and Presiding Member

Adv. N. Nursoo (Member) and Ms P. Dabideen (Member) concurred.