

SOUTH AFRICA / JUDGMENT

Bridgett and Another v Ibhayi Property Improvements (Pty) Ltd (NCT/296529/2024/75(1)(b)) [2024] ZANCT 33 (1 September 2024) [2024] ZANCT 33

COURT

National Consumer Tribunal

BEFORE

MC Peenze, A Potwana, S Mbhele

CASE / FILE NUMBER

NCT/296529/2024/75(1)(b)

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SITUATED AT CENTURION

Case

number: NCT/296529/2024/75(1)(b)

In

the matter between:

SEAN
BRIDGETT
1ST APPLICANT
HEATHER
BRIDGETT
2ND APPLICANT
And
IBHAYI
PROPERTY IMPROVEMENTS (PTY) LTD
RESPONDENT

Coram: Dr
MC Peenze
-
Presiding Tribunal
Member
Dr
A Potwana
-
Tribunal Member
Mr
S Mbhele
-
Tribunal Member
Date
of hearing
- 29 August 2024
Date
of judgment
- 1
September 2024

JUDGMENT

AND REASONS

THE PARTIES

1. The first applicant is Sean Bridgett (the first applicant). The first applicant is defined as a consumer in section 1 of the Consumer Protection Act 68 of 2008 (the CPA).
2. The second applicant is Heather Bridgett (the second applicant). The second applicant is a consumer, as per section 1 of the CPA.
3. The first and second applicants are married and will collectively be referred to as "the applicants." At the hearing, the applicants represented themselves.
4. The respondent is lbhayi Property Improvements (Pty) Ltd (the respondent). The respondent is defined as a supplier in section 1 of the CPA. Mr Quinton van der Berg, an attorney from Van der Berg Attorneys Incorporated, represented the respondent at the hearing.

TERMINOLOGY

5. A reference to a section in this judgment refers to a section of the CPA.

APPLICATION TYPE

- 6.

This is an application in terms of section 75(1)(b). In this application, the applicants, with leave granted by the Tribunal, seek redress against the respondent.

7.

The applicants allege that the respondent poorly replaced their roof.

BACKGROUND

8. In February 2021, the applicants contracted the respondent to replace the Harvey roof tiles on their main house with roof sheets. The respondent quoted R94 501,65 for the supply and installation of AZ150 Thunderstorm Corrugated 0.53mm and Zinc IBR 0,5 roof sheeting on the applicants' main house and outbuildings.[1] The applicants paid a deposit of R70 000.00, and the installation was completed in April 2021. After the project was completed, the applicants settled the outstanding balance.
9. In August 2021, the region where the applicants live experienced some rain, and the applicants noticed the main house's ceiling retaining mould. They reported it to the respondent but alleged that nothing was done to resolve the problem. On 5 December 2021, there was a downpour of rain, and the applicants allegedly noticed a leak in the entertainment area of their home. The applicants submit that the respondent provided poor workmanship and, as a result, caused damage to their home, which their insurer refused to cover when they attempted to file a claim.
10. The applicants complained to the National Consumer Commission, and on 14 September 2023, the Commission issued a notice of non-referral indicating that it would not pursue the matter since the applicants did not provide supporting evidence relating to their complaint. The applicants turned to the Tribunal for relief and seek an order for the roof and ceiling to be replaced or restored to eliminate the mould.

SUBMISSIONS BY PARTIES

11. During the hearing, the applicants limited their claim to the installation of roof sheeting on the main house and did not persist with any claim regarding roof repairs to the outbuilding.
12. The applicants submitted that the installation of the roof sheets on the main house did not meet the required standards of section 54(1). This contention is based on the fact that the roof sheets have gaps. The applicants provided evidence of photographs to prove the existence of the gaps, and the respondent did not dispute the pictures placed in evidence.
13. Further, the applicants argued that the respondent failed to install underlays when installing the roof sheets on the main house. The applicants relied on the respondent's expertise as a roof installer and only later realised that the absence of underlays contributed to a mould problem in their house.

14. The respondent argued that the installation was professionally executed. They outlined that they provided and installed the roof sheets in line with the quotation, which did not provide for any underlay. They also alleged having offered to install an underlay, which the applicants refused. The respondent further argued that the water leak and mould problems were not due to poor quality service but to maintenance neglect and poor ventilation in the house:
 - a. “I am of the opinion and advised the applicant accordingly that the issue he is experiencing is due to poor ventilation on an old and inadequately maintained ceiling.”[2]
 - b. “...the presence of mould was already clearly visible prior to the replacement of the roof sheeting...”[3]
 - c. “I deny the statement of the First Applicant that the presence of mould was non-existent for the past 27 years of occupying the property...”[4]
15. The respondent requests a dismissal of the application.

THE RELEVANT LAW AND EVALUATION

16. The applicants seek relief in terms of section 54(2) of the CPA.
17. Section 54(2) provides that if a supplier fails to perform a service to the standards contemplated in section 54(1), the consumer may require the supplier to remedy any defect in the quality of services performed or goods supplied or to refund a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.[5]
18. The standards referred to in section 54(2) are set out in section 54(1) as follows:
 - “(a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;
 - (b) the performance of the services in a manner and quality that persons are generally entitled to expect;
 - (c) the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect if any such goods are required for the performance of the services; and
 - (d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier to perform such services.”

CONSIDERATION OF FACTUAL DISPUTES

19. This matter calls for the determination of disputes of facts raised by the parties.

20. Over the years, our courts have developed principles for resolving factual disputes, culminating in the so-called Plascon-Evans rule.[6] Under this rule, when factual disputes arise in motion proceedings, relief may be granted only if the respondent admits the facts averred by the applicants or if the facts alleged by the respondent justify the order.
21. The court held in *Wightman t/a JW Construction v Headfour (Pty) Ltd & Another* that, if the denial by a respondent of a fact alleged by the applicant is not such as to raise a real, genuine or bona fide dispute of fact, in that case, it may proceed based on its correctness and include this fact among those upon which it determines whether the applicant is entitled to final relief.

[7]Where the allegations or denials of the respondent are so clearly untenable, the court is justified in rejecting them on the papers.[8] The court further stated:

“I have consulted some of the better-known decisions concerning the referral of applications to evidence or to trial. The leading

decision in this regard is, of course, *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1162, where Murray AJP said that if a dispute cannot properly be determined it may either be referred to evidence or to trial, or it may be dismissed with costs, ‘particularly when the applicant should have realised when launching his application that a serious dispute of fact was bound to develop’. The next of better known cases on this topic is that of *Conradie v Kleingeld* 1950 (2) SA 594 (O) at 597, where Horwitz J said that a petition may be refused where the applicant at the commencement of the application should have realised that a serious dispute of fact would develop.”[9]

22. In *National Director of Public Prosecutions v Zuma*,[10] the court stated that “where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the

facts

averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched, or so clearly untenable that the Court is justified in rejecting them merely on the papers.”

23. The Tribunal has considered the application of the Plascon-Evans rule in this matter. It is satisfied as to the inherent credibility of the applicant's factual averment that the newly installed roof leaked, causing dampness and mould in the house. The respondent submitted that the dampness in the house resulted from poor circulation and neglect of maintenance. The Tribunal is persuaded that the respondent's explanation for the dampness is far-fetched and untenable.

24. The Tribunal has taken a robust view in considering whether a real, genuine and bona fide dispute of fact exists regarding the reason for the mould in the applicants' house. The Tribunal is not satisfied that the respondent, who raised this dispute on affidavit, seriously and unambiguously addressed the fact said to be disputed. The mere speculation that the mould resulted from the house's poor ventilation and an old and inadequately maintained ceiling equates to a bare denial. Similarly, the statement that mould was visible before the installation of the roof sheets is unsubstantiated.
25. The respondent's version is also untenable, as both applicants stated under oath that the same house had no damp problem for twenty-seven years before the applicants replaced the roof. Further, the respondent's reference to structural problems is misplaced, as the only structural problems in evidence concern the outbuildings and not the main house. As the repair of the outbuildings was not brought for consideration before the Tribunal, submissions about the outbuilding's alleged structural problems were discarded.

PROHIBITED CONDUCT

26. The Tribunal has considered whether the respondent's conduct constitutes prohibited conduct^[11] in terms of the CPA. In doing so, the Tribunal is mindful of its wide-ranging powers to make appropriate orders concerning prohibited

conduct.^[12]

26. It is not disputed that the applicants outlined their needs and their expectation that the roof should not leak. The applicants convincingly argued that the roof started leaking after heavy rains, and the ceiling became moist. On a balance of probabilities, the Tribunal is persuaded that the roof installation was not done in a manner and quality that persons are generally entitled to expect. The respondent provided poor-quality service in the following three instances:

Failure to properly advise and quote the consumer

27. It is not disputed that the applicants wanted the roof replaced because the Harvey tiles were becoming old and loose. The applicants expected the new roof to resolve this problem and not leak or allow moisture to penetrate. The respondent was informed of the applicants' expectations before installing the roof sheets. Therefore, the Tribunal is persuaded that, as envisaged in section 54(1)(b), the respondent should have advised the applicants that the absence of underlays would lead to a dampening and leaking problem. The record shows that underlays were never quoted, and the Tribunal is persuaded that the applicants were not adequately informed of the need to install underlays required to prevent water leaking through the roof sheets. Although the respondent alleged that it advised the applicants to install underlays, it had a statutory obligation to ensure that it rendered services in a manner and quality that persons are generally entitled to expect. By failing to do so, the respondent contravened section 54(1)(b).

Failure to include underlays

28. The record shows that the failure to install underlays may result in the roof being unable to withstand heavy rains. In turn, dampness in the house then increases, which can contribute to a mould problem. As an adequately sealed roof was an expressed requirement in replacing the roof, the respondent provided poor quality service by not installing underlays when providing and installing the roof sheets.
29. Although the respondent did not explicitly include underlays in his quotation to the applicants, the Tribunal is persuaded that quality service in installing the roof sheets necessitated the installation of underlays. The supplier's failure to include underlays in its quotation does not absolve it from liability.

Faulty installation of roof sheets

30. The Tribunal further finds that the installation of the roof sheets did not meet the required standards of section 54(1). This contention is based on the fact that the roof sheets have gaps. The applicants provided evidence of such gaps, and the Tribunal is persuaded that these gaps contributed to the leaking of the roof. As the respondent was expected to install a roof that does not leak, the gaps between the roof sheets are evidence of the respondent's failure to deliver his services in a manner and quality that persons are generally entitled to expect from a supplier.

CONCLUSION

31. As the applicants had lived in a leak-free house for over twenty years, the balance of probabilities favours the applicants' argument that the leaking resulted from the respondent's poor-quality service.
32. The mould resulting from the leaking roof is worsening the health condition of the first applicant, who has a lung disease. As the roof of the main building was not installed in a manner and quality that persons are generally entitled to expect, the Tribunal finds that the respondent transgressed section 54(1)(b).

RELIEF

33. The CPA aims to protect consumers from exploitation and abuse in the marketplace. It empowers the Tribunal to make various orders in respect of prohibited conduct. However, the CPA does not empower the Tribunal to order general damages or other incidental costs. In this matter, the mould which accumulated due to the respondent's failure to render quality service to the applicants amounts to general damages. Section 52(1)(b) provides that the civil courts may assess and order such damages. It states, "If, in

any proceedings before a court concerning a transaction or agreement between a supplier and consumer, a person alleges that this Act does not otherwise provide a remedy sufficient to correct the relevant prohibited conduct, unfairness, injustice or unconscionability, the court, after

considering the principles, purposes and provisions of this Act, and the matters set out in subsection (2), may make an order contemplated in subsection (3).” Accordingly, what would be appropriate in this case is for the applicants to institute a civil claim before an appropriate forum if they believe that such a claim can be proved.

34. In terms of section 115(2)(a), a person who has suffered loss or damage as a result of prohibited conduct or dereliction of required conduct must file with the registrar or clerk of the court a notice from the Chairperson of the Tribunal in the prescribed form:

“(i) certifying whether the conduct constituting the basis for the action has been found to be prohibited or required conduct in terms of [the CPA];

(ii) stating the date of the Tribunal’s finding, if any; and

(iii) setting out the section of [the CPA] in terms of which the Tribunal made its finding, if any.”

35. The certificate referred to in section 115(2)(b) is sufficient proof of its contents.[13]

ORDER

36. In the result, the Tribunal makes the following order:

36.1. It is declared that the respondent contravened section 54(1)(b).

36.2. The contravention listed above is declared prohibited conduct.

36.3. The respondent must repair the roof and ceiling of the main house within 15 days after issuing this order.

36.4. There is no cost order.

DR. MC PEENZE

PRESIDING MEMBER

Tribunal members Dr A Potwana and Mr S Mbhele concur.

[1] See page 204 of the record.

[2] At para 4.9 of the respondent’s answering affidavit.

[3] At 5.17 of the respondent’s answering affidavit.

[4] At para 5.23 of the respondent’s answering affidavit.

[5] A “failure” is defined in section 53 as “the inability of the goods to perform in the intended manner or to the intended effect”.

[6] See *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984 (3) SA 623 (A) at 634H-635C.

- [7] Wightman t/a JW Construction v Headfour (Pty) Ltd & Another [2008] ZASCA 6; 2008 (3) SA 371(SCA) at para 12.
- [8] Ibid paras 11-13
- [9] Ibid, paras 50 F-H
- [10] See National Director of Public Prosecutions v Zuma [2009] ZASCA 1; 2009 (2) SA 277 (SCA), at para 26.
- [11] Prohibited conduct is defined in section 1 as an act or omission in contravention of the CPA.
- [12] See National Credit Regulator v Dacqup Finances CC trading as ABC Financial Services – Pinetown and Another (382/2021) [2022] ZACSA 104 (24 June 2022).
- [13] Section 115(3).

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