

SOUTH AFRICA / JUDGMENT

Dauids and Another v M & Y Tombstones and Granite Works (Pty) Ltd (NCT/267544/2023/75(1)(b)) [2024] ZANCT 43 (27 September 2024) [2024] ZANCT 43

COURT

National Consumer Tribunal

BEFORE

C Sassman, N Maseti, MC Peenze

CASE / FILE NUMBER

NCT/267544/2023/75(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/267544/2023/75(1)(b)

In the matter between: NANDIPHA DAVIDS FIRST APPLICANT WAYNE DAVIDS SECOND APPLICANT and M & Y TOMBSTONES AND GRANITE WORKS (PTY) LTD RESPONDENT

Coram:

Adv C Sassman

- Presiding Tribunal member

Ms N Maseti

- Tribunal member

Dr MC Peenze

- Tribunal member

Date of hearing

- 25 September 2024

Date of

judgment

- 27 September 2024

JUDGMENT AND REASONS

THE APPLICANTS

1. The first applicant is Nandipha Davids (the first applicant). The first applicant is a consumer, as defined in section 1 of the Consumer Protection Act 68 of 2008 (the CPA) and the daughter of the second applicant.
2. The second applicant is Wayne Davids (the second applicant). The second applicant is a consumer, as defined in section 1 of the CPA and the first applicant's father.
3. The first applicant was not present at the hearing, and the second applicant represented himself.

THE RESPONDENT

4. The respondent is M & Y Tombstones and Granite Works (Pty) Ltd (the respondent). The respondent is a supplier, as defined in section 1 of the CPA. The respondent was not represented at the hearing.

TERMINOLOGY

5. A reference to a section in this judgment refers to a section of the CPA, and a reference to a rule refers to the rules of the Tribunal[1].

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, applied to the Tribunal for redress against the respondent. The applicants allege that the respondent contravened the CPA by offering a service which was not in a manner and quality that persons are generally entitled to expect.

BACKGROUND

7. On 15 December 2021, the second applicant recruited the respondent to design and erect a tombstone on his late wife's grave site and paid the respondent R49 000.00 for the service. The payment was made in two parts, R28 000.00 and R21 000.00, on 15 and 21 December 2021. He alleges that the tombstone the respondent provided does not conform to specific requirements given to the respondent before the commencement of work. The second applicant submitted that the applicants specifically requested a four-tier tombstone and provided the respondent with a photo example of the design. The respondent allegedly agreed to the applicants'

requirements. The applicants contend that the respondent failed to build the four-tier tombstone paid for. Instead, a single-tier

tombstone was built. The respondent allegedly stated that due to the municipality's space limitation, it could not proceed with building a tombstone as agreed upon with the applicants. The applicants further allege that the respondent used inferior materials in building the tombstone and that it is rapidly deteriorating. The applicants seek a full refund from the respondent. The respondent has not opposed the application, and it is accordingly considered unopposed.

THE APPLICANTS'

SUBMISSIONS

8. The applicants submitted that they clearly communicated to the respondent that they wanted a four-tier tombstone erected with a granite finish and provided a photograph as an example of the design. They were invoiced for what they requested, but the respondent supplied a single-tier tombstone that was not finished in granite. The second applicant visits the grave site regularly and has

observed that the tombstone is continuously deteriorating. Inferior materials were used in its construction, and it causes him great distress when visiting the grave site. The respondent has made many promises to repair the tombstone but has not done so. The respondent has refunded the applicants R3 000.00 for not including a plastered wall around the tombstone as initially agreed. The applicants believe they were exploited as consumers and are entitled to a full refund to rebuild the tombstone.

APPLICABLE RULE AND SECTIONS OF THE ACT

9. Rule 13(5) states that any fact or allegation in the application or referral not explicitly denied or admitted in an answering affidavit will be deemed admitted by the respondent.
10. Section 54(1) (b-c) states that when a supplier undertakes to perform any services for a consumer, the consumer has the right to the performance of those services, in a manner and quality that persons are generally entitled to expect. In addition, the goods used by the supplier must be free of defects and of a quality that persons are generally entitled to expect.
11. Section 54(2) (a-b) states that if a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to remedy the defect in quality or refund the consumer a reasonable portion of the price paid for the services performed.

CONSIDERATION OF THE EVIDENCE

12. By failing to oppose the matter, the respondent lost the opportunity to defend the allegations made against it. The Tribunal is seized only with the applicants' documentary evidence and oral arguments. In terms of rule 13(5), the Tribunal deems the facts alleged by the applicants as admitted by the respondent because it elected not to be represented at the proceedings or oppose the matter.
13. The Tribunal is persuaded that the respondent failed to provide a service in a manner and quality that persons are generally entitled to expect. The continuous deterioration of the tombstone due to poor workmanship and inferior materials used in its construction is evidence thereof.
14. The rights afforded to consumers under the CPA are there to protect them. An infringement of those rights could have serious financial consequences for a consumer. In this case, the applicants have not only been financially prejudiced but have been unable to provide a dignified resting place for their family member. This undoubtedly continues to cause them a great deal of distress.
15. Since there is no evidence that the respondent will honour its promises to repair the tombstone, the Tribunal finds that the applicants are entitled to a refund of a reasonable portion of the price paid to the respondent. The Tribunal considered the evidence before it and concluded that considerable skilled labour and materials would be required to rebuild the tombstone to the applicants' specifications. The Tribunal further notes that the cost of labour and materials would have increased since the respondent provided the applicants with a quotation. As a result, the Tribunal finds that a refund of R46 000.00 would be reasonable in this instance.

CONCLUSION

16. The Tribunal finds that the respondent has failed to provide its service in a manner and quality that persons are generally entitled to expect. The respondent has also delivered and installed goods as part of its service, which does not align with the quality that persons are generally entitled to expect. The tombstone is deteriorating because of the respondent's poor workmanship, and the Tribunal finds that the respondent has contravened sections 54(1)(b) and (c). In line with section 54(2)(b), the applicants are entitled to a refund of R46 000.00.

ORDER

17. Accordingly, the Tribunal makes the following order:
 - 17.1 The respondent has contravened sections 54(1)(b) and (c) of the CPA.
 - 17.2 The respondent's contravention of sections 54(1)(b) and (c) of the CPA is declared prohibited conduct.

17.3 The respondent is ordered to refund the applicants R46 000.00 (forty-six thousand rand) within ten business days of issuing this

judgment.

17.4 There is no cost order.

[signed]

Adv C Sassman

Presiding Tribunal member

Tribunal members Ms N Maseti and Dr MC Peenze concur.

[1] Published under GN 789 in GG 30225 on 28 August 2007 as amended by GN 428 in GG 34405 on 29 June 2011, GN R203 in GG 38557 on 13 March 2015 and GN 157 in GG 39663 on 4 February 2016.

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Prepared on 11 October 2026 · Esheria