

SOUTH AFRICA / JUDGMENT

Gareeb v JD Consumer Electronics and Appliances (Pty) Ltd t/a Incredible Connections - RSA (NCT-294641-2023-Section 75(1)(b)) [2024] ZANCT 7 (8 April 2024)

[2024] ZANCT 7

COURT

National Consumer Tribunal

BEFORE

Z Ntuli, S Hockey, Peenze

CASE / FILE NUMBER

NCT-294641-2023-Section 75(1)(b)

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Case

number: NCT-294641-2023-Section
75(1)(b)

In

the matter between:

JAICHUN

GAREEB

APPLICANT

And

JD

CONSUMER ELECTRONICS AND APPLIANCES (PTY) LTD

RESPONDENT

T/A

INCREDIBLE CONNECTIONS - RSA

Coram:

Ms

Z Ntuli:	Presiding Tribunal Member Mr
S Hockey:	Tribunal Member Dr
Peenze:	Tribunal Member Date of Hearing: 8 April 2024 Date
of Ruling:	8 April 2024

RULING

AND REASONS

APPLICANT

1. The applicant is Jaichun Gareeb, a consumer, as defined in section 1 of the Consumer Protection Act 68 of 2008 (the CPA). At the hearing, he was represented by Nhlakanipho Nkosi of Manoj Haripersad & Associates.

RESPONDENT

2. The respondent is JD Consumer Electronics and Appliances (Pty) Ltd, trading as Incredible Connections - RSA, a company with its principal address at 6 Eastern Service Road, Sandton, Johannesburg. The respondent is a supplier, as defined in section 1 of the CPA. Neither the respondent nor its representative appeared at the hearing.

TERMINOLOGY

3. A reference to a section in this ruling refers to a section of the CPA, and a reference to a rule refers to the Rules of the National

Consumer Tribunal (the Rules)[1].

APPLICATION TYPE

4. This is an application in terms of section 75(1)(b). With leave granted by the National Consumer Tribunal (Tribunal), the applicant seeks redress against the respondent.
5. The applicant alleges a breach of the CPA because the respondent allegedly failed to comply with the applicant’s request for a refund of the purchase price in accordance with section 56(2)(b).

JURISDICTION

6. Section 27(1)(a) of the National Credit Act, 2005 (the NCA) empowers the Tribunal or a Tribunal member acting alone to adjudicate allegations of prohibited conduct by determining whether prohibited conduct has occurred and, if so, by imposing a remedy provided for in the NCA.
7. Section 150 of the NCA empowers the Tribunal to make an appropriate order concerning prohibited or required conduct under the NCA or the CPA. Therefore, the Tribunal has jurisdiction to hear this application.

ISSUES TO BE DECIDED

8. The Tribunal must decide whether the applicant has proved that the respondent contravened the CPA's provisions and is entitled to the relief sought.

CONSIDERATION OF EVIDENCE ON A DEFAULT BASIS

9. The applicant filed this application with the Tribunal on 22 September 2023.
2023. In line with rule 30, the applicant emailed the application to the respondent using i[...]@jdg.co.za on 22 September 2023 and served it on the respondent by registered mail on 27 September 2023.
10. Rule 13 allows the respondent 15 business days after being served with the application to serve an answering affidavit on the applicant and file same with the Tribunal. The respondent did not do so. The applicant did not apply for a default order as rule 25(2) permits.
11. On 21 February 2024, the Tribunal Registrar issued a notice of set-down for 8 April 2024 to hear the merits. As of the hearing date, no answering affidavit or application for the postponement was received from the respondent.
12. Rule 13(5) states, "Any fact or allegation in the application or referral not specifically denied or admitted in the answering affidavit will be deemed to have been admitted". In the absence of an all answering affidavit from the respondent, the allegations contained in the application are deemed to be admitted.
13. This ruling is based on the documents before the Tribunal and the applicant's arguments at the hearing, which was held virtually through MS Teams.

BACKGROUND

14. The dispute concerns a Delf Inspiron 5410 AIO laptop (the laptop) that the applicant purchased from the respondent on 14 January 2023 for R21,999.00. The laptop became defective three days after its purchase and was returned to the respondent. The applicant requested a refund, outlining that the laptop was faulty and not in good working order.

15. After a technical analysis, the respondent stated that it was a BIOS software problem and offered to run an update on the software in-store. The applicant insisted on a refund, which the respondent refused. According to the applicant, BIOS is the firmware used to provide runtime services and perform hardware initialisation during booting. As BIOS is embedded in a device's microprocessor, the applicant submits that a software update cannot correct a firmware fault. The applicant requests the Tribunal to order a full purchase price refund.
16. On 9 May 2023, the applicant filed a complaint with the National Consumer Commission (NCC). On 25 August 2023, the NCC issued a non-referral notice indicating that the applicant's redress cannot be provided under the CPA. On 22 September 2023, the applicant applied for leave to refer the matter to the Tribunal. The respondent did not file an answering affidavit to oppose the application.
17. On 6 November 2023, the Tribunal Registrar issued a notice of filing. On 18 December 2023, a notice of set-down was issued for the leave to refer to be heard on 23 January 2024. The Tribunal ruling granting leave to refer was issued on 24 January 2024.
2024. A notice of set-down was issued on 21 February 2024 for the matter to be heard unopposed on 8 April 2024,

THE APPLICANT'S

SUBMISSIONS

18. The applicant confirmed, based on proof of service, that the notice of the application was served on the respondent by email on 22 September 2023 and on 27 September 2023 by registered mail to the respondent's principal office address in line with rule 30.
19. On the merits, the applicant relied on the papers submitted to the Tribunal and presented the following:

19.1 The applicant purchased a laptop on 14 January 2023 at the respondent's Gateway branch in Durban. About three days later, the laptop started crashing. It continued crashing despite switching it off and on, so the applicant could not use it. The applicant's son contacted the respondent about the problem and was advised to return the laptop before 14 April 2023 for a refund.

19.2 When the applicant returned the laptop to the respondent on 2 April 2023, the respondent's technician took it to the back office to conduct an assessment. Upon his return after about two hours, the technician informed the applicant that the laptop was faulty and that he should consider insisting on a refund. However, the store manager, Mr. Mohamed, told the applicant that a refund would not be paid because the issue was software-related. Of note is that the technician could not repair the laptop despite spending two hours on it, and it needed to be sent to the manufacturer for repair. The applicant could not understand why a brand- new laptop would have a problem of this nature. Hence, he demanded a refund.

19.3 The applicant believes he is entitled to a refund as the laptop does not fit the purpose for which it was bought. The defect occurred within six months of purchase, and the CPA permits the applicant to choose a remedy. As the respondent declined to refund the applicant, he filed a complaint with the help of his legal cost insurer. When the NCC issued a notice of non-referral, the applicant engaged Manoj Haripersad & Associates to approach the Tribunal. The applicant seeks an order for a full refund of the purchased price.

20. The Tribunal enquired where the laptop is currently, and the applicant stated that it is with the respondent.

APPLICABLE SECTIONS OF THE ACT

21. Section 150(e) of the NCA states that in addition to its other powers, the Tribunal may make an appropriate order about prohibited conduct or required conduct in terms of the CPA.
22. Section 75(1)(b) states that if the NCC issues a notice of non-referral in response to a complaint, other than on grounds contemplated in section 116, the complainant concerned may refer the matter directly to the Tribunal, with leave of the Tribunal.
23. Section 3(1)(d)(i)-(ii) states that the purpose of the CPA is to promote and advance the social and economic welfare of consumers in South Africa by protecting them from unconscionable, unfair, unreasonable, unjust, or otherwise improper trade practices; and deceptive, misleading, unfair, or fraudulent conduct.
24. Section 53(1) (a) defines a defect as (i) any material imperfection in the manufacture of the goods or components, or the performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or (ii) any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances.
25. Section 55(2)(a)-(c) states that consumers have the right to receive goods that are reasonably suitable for their intended purposes. They have a right to goods of good quality and in good working order. The goods must be free of defects and be useable and durable for a reasonable time.
26. Section 56(2) states that within six months after the delivery of goods to a consumer, the consumer may return the goods to the supplier without penalty and at the supplier's risk and expense if the goods fail to satisfy the requirements and standards contemplated in section 55. The supplier must, at the direction of the consumer, either repair or replace the failed, unsafe, or defective goods or refund the consumer the price paid for the goods.

CONSIDERATION OF THE EVIDENCE

27. Regarding service, the Tribunal confirmed that the applicant emailed the notice of the application to the respondent on 22 September 2023 and, within three days, sent it to the respondent by registered mail, as required in rule 30.
28. Regarding the nature of the defect, the Tribunal accepts the applicant's version, which stands unopposed. In *Motus v Wentzel*[2], the court dealt with an alleged defective vehicle and held that not every small fault amounts to a defect as defined in the CPA. The laptop crashed just after three days of purchase. As the laptop was brand new, the applicant expected it to be in good working order and for a durable period, which was different. The problem, whether software or hardware-related, rendered the laptop unusable and unfit for purpose. This imperfection is a defect contemplated in section 53(1).
29. The respondent failed to adhere to the standards set in section 55(2)(a)-(c), which entitled the applicant to a repair, replacement, or refund under section 56(2). In such cases, the CPA requires the respondent to act according to the consumer's direction. The applicant chose a purchase price refund. The respondent abused its power by dictating the remedy for the applicant. The respondent deprived the applicant of the use of the laptop. The respondent's refusal to refund the purchase price violates section 56(2)(b).
30. The respondent failed to observe the objectives of the CPA, specifically section 3(1)(d), which aims to protect consumers from unconscionable, unfair, unreasonable, unjust, or otherwise improper trade practices, amongst others. It has grossly undermined the rights of the applicant. It is unfair that the respondent benefits from the purchase price while depriving the applicant of using and possessing a laptop. Consumers are often vulnerable, and the CPA seeks to protect them from the abuse of their rights by unscrupulous suppliers. The CPA is only effective if adequately enforced to protect consumers like the applicant.

CONCLUSION

31. The respondent failed in its statutory duty under sections 55(2)(a)-(c) when it sold a defective laptop and 56(2)(b) when it declined to refund the purchase price to the applicant in line with his choice of remedy. This is not only abusive but a blatant disregard for the applicant's rights and the objectives of the CPA.
32. On this basis, the respondent should be found to have contravened sections 55(2)(a)-(c) and 56(2)(b). The Tribunal must declare that the respondent's conduct is prohibited. Consequently, in law, the applicant is entitled to the relief requested in his application.

ORDER

33. Accordingly, the Tribunal makes the following order:
 - 33.1 The respondent contravened sections 55(2)(a)-(c) and 56(2)(b) amounting to prohibited conduct;

33.2 The respondent must refund the applicant the purchase price paid for the laptop, namely R21,999.00, within ten business days after the issuing of this ruling; and

33.3 There is no cost order.

Ms. Z Ntuli

Presiding Tribunal Member

Tribunal Members Mr S Hockey and Dr Peenze concur.

[1] GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters

before the National Consumer Tribunal, 2007 (Government Gazette No. 30225).

[2] Motus Corporation (Pty) Ltd and Another v Wentzel (Case no 1272/2019)

[2021] ZASCA 40 (13 April 2021) para 41.

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