

SOUTH AFRICA / JUDGMENT

Gewanlal and Another v Door Masters JHB (Pty) Ltd (NCT/275743/2023/75(1)(b)) [2024] ZANCT 14 (3 July 2024) [2024] ZANCT 14

COURT

National Consumer Tribunal

BEFORE

S Hockey, MC Peenze, A Potwana

CASE / FILE NUMBER

NCT/275743/2023/75(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case No: NCT/275743/2023/75(1)(b)

In the matter between: NEIL GEWANLAL FIRST APPLICANT NATASHA GEWANLAL SECOND APPLICANT and DOOR MASTERS JHB (PTY) LTD RESPONDENT

Coram:

Mr S Hockey

- Presiding Tribunal member

Dr MC Peenze - Tribunal member

Dr A Potwana - Tribunal member

Date of the hearing: - 03 July 2024

Date of judgment:

- 03 July 2024

JUDGMENT AND REASONS

THE PARTIES

1. The applicants in this matter are Neil Gewanlal and Natasha Gewanlal, the first and second applicants respectively. They will jointly be referred to as the applicants. The applicants are consumers as defined in section 1 of the Consumer Protection Act, 2008 (the CPA). At the hearing of this matter, the applicants represented themselves.
2. The respondent is Door Masters JHB (Pty) Ltd, a company registered as such under the company laws of the Republic of South Africa and a supplier in terms of section 1 of the CPA.

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 AND JURISDICTION

4. The applicants first referred their complaint to the National Consumer Commission (the NCC), who, after an assessment thereof, concluded on 16 May 2023 that the redress sought by the applicants could not be provided in terms of the CPA.
5. Thereafter, the applicants referred this matter to the National Consumer Tribunal (the Tribunal) in terms of section 75(1)(b). This section provides that if the NCC issued a notice of non-referral as it did in the present matter, the complainant may refer the matter directly to the Tribunal, with leave of the Tribunal. The Tribunal granted such leave on 1 May 2024.
6. Accordingly, the Tribunal has jurisdiction in terms of section 73(2)(b) and section 27(a)(ii)[2] of the National Credit Act 34 of 2005 (the NCA) to consider this application.

HEARING OF THE MATTER ON AN UNOPPOSED BASIS

7. The applicant filed this application and served it on the respondent by sending it by registered post to its registered office. The parcel tracking results from the South Africa Post Office[3] indicate that the parcel containing the application reached the relevant post office and that a notification was sent to the respondent indicating that the parcel was ready for collection from the post office concerned.
8. In terms of rules 13(1) and (2), a respondent to an application or referral to the Tribunal may oppose the matter by filing an answering affidavit within 15 business days of receipt of the application or referral.
9. The respondent failed to file an answering affidavit within the prescribed period or at all, and the matter was accordingly set down for hearing on an unopposed basis.

10. In terms of rule 13(5), any fact or allegation in an application or referral not specifically denied or admitted in an answering affidavit will be deemed to have been admitted. Since no answering affidavit has been filed, the allegations by the applicant must be deemed to have been admitted by the respondent.

BACKGROUND

11. The applicants engaged the respondent's services to provide them with wood restoration services at their residence. For this purpose, they paid a deposit of R23 418.00 on 9 March 2022.
12. The work could not commence because the respondent's employees could not enter the estate where the applicants' residence is situated because they had no or expired work permits.
13. Subsequently, the applicants and the respondent agreed that the latter would perform work on the applicants' residence for the value of the deposit paid, namely R23 418.00. The respondent informed the applicants that it no longer had employees but would use subcontractors to perform the agreed-upon work.
14. While the parties were finalising the work's details, the respondent ceased communicating with the applicants. Since then, the respondent has not replied to any emails or WhatsApp messages or taken any of the applicants' telephone calls.
15. According to the applicants, they have tried several means to settle this matter with the respondent, all to no avail.
16. The applicants now seek a refund of R23 418.00, which they initially paid as a deposit to the respondent.

RELEVANT LEGAL PROVISIONS

17. In terms of section 54(1)(a), when a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to the timely performance and completion of those services.
18. Section 54(2)(b) provides that if a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to refund the consumer a reasonable portion of the price paid for the services having regard to the extent of the failure.

EVALUATION

19. As can be gleaned from its preamble and section 3, the CPA seeks to prescribe certain standards and norms to promote consumers' fair and reasonable treatment in their business dealings in the marketplace.

20. It is undisputed that the parties entered into an agreement whereby the respondent was to provide wood restoration services to the applicants. The agreement was later novated for the provision of services to cover the amount of R23 418.00, which the applicants had already paid to the respondent, initially as a deposit for the original work.
21. The respondent failed or refused to perform the agreed-upon work despite having received payment for the same.
22. In the circumstances, the respondent breached the applicants' rights under section 54(1)(a), and the latter are accordingly entitled to a refund under section 54(2)(b). Since the respondent has not performed any of the services it was contracted to perform, the Tribunal is of the view that the full amount paid to it must be refunded to the applicants as a reasonable amount in these circumstances.

THE ORDER

23. In the result, the following order is made:

23.1. The respondent is declared to have contravened section 54(1)(a) and such contravention is declared to be prohibited conduct.

23.2. The respondent shall refund the applicants the amount of R23 418.00 within 30 calendar days from the issuing of this judgment into a bank account elected by the applicants.

23.3. There is no order as to costs.

S Hockey (Presiding Tribunal member)

Tribunal members Dr A Potwana and Dr M 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] This section provides that the Tribunal or a member of the Tribunal acting alone in accordance with the NCA or the CPA may adjudicate in relation to any allegations of prohibited conduct.

- [3] See page 63.1 of the record.

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Prepared on 13 October 2026 · Esheria