

SOUTH AFRICA / JUDGMENT

Kwazulu-Natal Consumer Tribunal and Another v Khabelimsongo Construction (Pty) Ltd (KZNCT12/2022) [2022] ZACONAF 17 (29 November 2022) [2022] ZACONAF 17

COURT

Consumer Affairs Court

BEFORE

B Dumisa, P Dabideen, N Nursoo

CASE / FILE NUMBER

KZNCT12/2022

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IN

THE KWAZULU-NATAL CONSUMER TRIBUNAL

HELD

IN IXOPO

Case

number: KZNCT12/2022

In

the matter between:

KWAZULU-NATAL
CONSUMER TRIBUNAL FIRST
PLAINTIFF
NCEBA
DLAMINI SECOND
PLAINTIFF
And
KHABELIMSONGO
CONSTRUCTION (PTY) LTD DEFENDANT

Coram: Prof
B Dumisa: Chairperson and
Presiding Tribunal Member
Ms
P Dabideen: Tribunal Member
Adv
N Nursoo: Tribunal Member
Date
of Hearing: 08 November 2022
Date
of Judgment: 29 November 2022

JUDGEMENT

AND SETTLEMENT ORDER

Judgment

and Settlement Order

KwaZulu Natal Consumer Protector and Nceba Diamini v Khabelimsongo Construction (Pty) Ltd
KZNCT12/2022

Author: Prof B.C. Dumisa

2.1 On the 3rd of March 2021 the Consumer bought two detergent mixer machines from the Defendant for R31200.00 (Thirty-One Thousand And Two Hundred Rands).

2.2 The Consumer paid R21840 (Twenty-One Thousand Eight Hundred And Forty Rand) as the deposit.

2.3 Both machines were never delivered to the Consumer as the Defendant alleged that his company was looted in July 2021.

2.4 The Defendant has to-date failed to produce proof of the looting incident.

2.5 The Second Plaintiff represented himself.

DEFENDANT

3. The Defendant is Mr ELLIOT TIBE, the owner of KHABELIMSONGO CONSTRUCTION (Pty) Ltd, a private company and service provider, with its principal place of business situated at 32 Margaret Street, Ixopo, in the Province of KwaZulu- Natal.
4. The Defendant was represented by an Attorney, Ashlin Naidoo from SEESA.

EARLIER EFFORTS OF THE PARTIES TO AMICABLY RESOLVE THIS MATTER

5. The Defendant earlier showed signs of cooperating with both the First Plaintiff and the Second Plaintiff.
6. The Defendant earlier tried to lodge a counter-claim against the Consumer, claiming that the Defendant had installed burglar guards at the Consumer's home for R4900.00 and that the Consumer had not paid for that service. The Office of the First Plaintiff immediately informed the Defendant that they had no jurisdiction to deal with counter-claim as it had no bearing on the transaction at hand.
7. On 21 July 2022 at a mediation meeting facilitated by the Office of the First Plaintiff, a settlement was signed by both parties whereby the Defendant agreed to deliver both the mixers by 22 August 2022, but the Defendant failed to honour his promise.
8. When the Defendant failed to honour his promise to deliver both mixers by the 22nd of August 2022, the First Plaintiff concluded that it was clear that the Defendant was not serious about his commitment to deliver the machines. It was on these grounds, the Consumer informed the Office of the First Plaintiff that he (the Second Plaintiff) is now demanding the full refund of the deposit he paid to the Defendant. Hence this Tribunal Hearing.

THE HEARING

9. This matter was initially set down for a hearing on the 4th of October 2022, where the Defendant was personally not in attendance, but an Attorney, Ashlin Naidoo phoned the First Plaintiff

on behalf of the Defendant and requested a postponement of the matter, citing that he was only briefed by the Defendant at the last minute.

9.1 The Tribunal did express its very strong objections to and reservations about parties who apparently abuse the Tribunal processes by initially not indicating their intention to defend the matters, and only come at the very last minute to request postponements.

9.2 The matter was adjourned to the 8th of November 2022. The Tribunal made it clear that at this new date it would proceed with the matter whether the Defendant is in attendance or not.

10. On the 8th of November 2022, the parties asked to be allowed to negotiate a Settlement Agreement, which was successfully concluded and signed by

10.1 The First Plaintiff, represented by Mr Ryan Moodley;

10.2 The Second Plaintiff, Mr Nceba Dlamini representing himself; and

10.3 The Defendant Mr Elliot Tibe being represented by an Attorney, Ashlin Naidoo from SEESA.

11. See "Annexure A", the SETTLEMENT AGREEMENT attached.

CONCLUSION

12. Consequently, the Tribunal is persuaded that it is appropriate to grant the request of the parties that the Settlement Agreement be made an Order of the KZN Consumer Tribunal.

ORDER

13. Accordingly, the Tribunal makes the following order:

The Settlement Agreement, dated the 8th of November 2022, concluded between the First Plaintiff, Second Plaintiff, and The Defendant,

which is attached as "Annexure A", under case KZNCT12/2022, is confirmed and made an order of the KwaZulu-Natal Consumer Tribunal in terms of Section 150(d) of the National Credit Act, Act 34 of 2005.

14. The terms and conditions of this SETTLEMENT AGREEMENT remain applicable and enforceable, as is, as stated on the SETTLEMENT AGREEMENT, regardless of the date of this JUDGMENT AND SETTLEMENT ORDER.

15. There is no order as to costs.

Thus, done and signed in Durban on this 29th Day of November 2022.

Prof. B. Dumisa

Chairperson and Presiding Tribunal Member

Ms. P. Dabideen (Tribunal Member) and Adv N. Nursoo (Tribunal Member) concurring.

ANNEXURE A

IN THE KWAZULU NATAL CONSUMER TRIBUNAL HELD AT IXOPO

CASE NUMBER: KZNCT12/2022

KWAZULU-NATAL CONSUMER PROTECTOR - FIRST PLAINTIFF

MR NCEBA DLAMINI - SECOND

PLAINTIFF

AND

KHABELIMSONGO CONSTRUCTION (PTY) LTD - DEFENDANT

SETTLEMENT AGREEMENT

WHEREAS the consumer lodged a complaint with the Office of the Kwazulu Natal Consumer Protector in terms of the Consumer Protection Act 68 of 2008 and the Kwazulu Natal Consumer Protection Act 04 of 2013 claiming inter alia:-

- i. Confirmation of the termination of the Agreement;

ii. The respondents conduct to be declared as a prohibited conduct in Contravention of S19

(2) (a)

(i) and S47 (3) and S54 of the Consumer Protection Act No 68 of 2008;

iii. To refund to the Second Plaintiff the full amount of R21 840 (twenty one thousand eight hundred and forty rand) being the amounts paid for two mixer machines;

iv. Interest at the prescribed rate tempore morae.

v. Further and/or alternative relief.

AND WHEREAS the Office of the Consumer Protector Kwazulu Natal facilitated the handling of the complaint which was referred to the

Kwazulu Natal Consumer Tribunal.

AND WHEREAS subject to the confirmation of the Consumer Tribunal in terms of S10 of the Kwazulu Natal Consumer Protection Act 04 of 2013 the parties agreed to settle the complaint on the following terms:-

1. The Defendant will supply two new automated detergent machines to the second plaintiff on or before the 21st of November 2022.
2. Subsequent to the delivery of the detergent machines, the second plaintiff shall pay the full amount of R14 260.00 (fourteen thousand two hundred and sixty rand) in two instalments of R4900.00 (Four thousand and nine hundred rand) on or before the 28th of February 2023 and the balance amount of R9360.00 (Nine thousand three hundred and sixty rand) to be paid on or before the 30th of April 2023 owing to the defendant.
3. Should the defendant fail to deliver as set in point 1 above, the full amount of R21 840 (twenty one thousand eight hundred and forty rand) shall immediately become due, owing and payable to the second plaintiff, and

The parties agree that the second plaintiff shall approach any competent court to enforce this agreement which is made an order of the Consumer Tribunal and to further seek interest at the prescribed rate at the time of this agreement was made an order of the Kwazulu Natal Consumer Tribunal.

4. The parties further agree that the terms and conditions of this agreement will be made an order of the Kwazulu Natal Consumer Tribunal.

Dated at Ixopo on this 08 day of November 2022.

First Plaintiff

Represented by Ryan Moodley

Second Plaintiff Defendant

Mr N Dlamini Mr

Tibe

Legally Represented by Ashlin

Naidoo from SEESA

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