

SOUTH AFRICA / JUDGMENT

Molale v Elarda (NW17/2023)
[2024] ZACONAF 9 (26 March 2024)
[2024] ZACONAF 9

COURT
Consumer Affairs Court

BEFORE
KJP Kgomongwe, TI Rakoka, ML Kortjas

CASE / FILE NUMBER
NW17/2023

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IN
THE CONSUMER
AFFAIRS COURT FOR
THE
NORTH
WEST
PROVINCE,
HELD
AT
MMABATHO
CASE
NO: NW17/2023
In
the matter

between:

-
MS
KEALEBOGA
MOLALE
PLAINTIFF
And
IBRAHIM
ABDELSALAM ELARDA
DEFENDANT

JUDGMENT

Delivered on 26 March 2024

Plaintiff Represented by MrS.E Letsogo

Defendant Represented by Ibrahim Abdelsalam Elarda

CORUM: KJP KGOMONGWE {Tl Rakoka and, ML Kortjas Concurring)

SUMMARY

Plaintiff entered into a lay bye agreement purchased, a headboard from Defendant and Defendant failed to deliver the purchased goods.

ORDER

Agreement ordered cancelled and Defendant ordered to refund the Plaintiff.

[1] PARTIES

The Plaintiff is MS K Molale an adult female person residing at Pudumoe, Taung, North West.

[2] DEFENDANT

The Defendant is Mahomed Elarda conducting his business at Shippard Street Mahikeng under trade name and lifestyle furniture.

[3]

BACKGROUND

The parties have on 27/10/2022 entered into a laybye agreement to purchased a grey velvet king headboard from the Defendant at the

agreed purchased price of R7000,00. Plaintiff paid R4000,00 on 27/10/2022 and a balance of R3000,00 was paid on 21/11/2022. Defendant failed to deliver the headboard to the Plaintiff purchased where after Plaintiff opted for the cancellation of the agreement and

demanded refund of R7000,00(seven thousand rand) paid.

[4] PROCEEDINGS

Defendant failed to refund the Plaintiff and proceedings were instituted by the Consumer Protector against the Defendant in terms of Section 9 of the Consumer Affairs (Harmful Business Practices) Act 4/1996.

Defendant was summoned to appear before court on 22/01/2024 and both parties appeared before court and the matter was postponed to afford the Defendant an opportunity to file his notices to defend the action.

On 26 March 2024 the matter appeared before court and presented to court a settlement agreement to be made an order of court.

[5] APPLICABLE LAW

Consumer's right with respect to delivery of goods and supply of services.

Section 19(2)

Rights with respect to delivery of goods or supply of service.

Section 19 of the Consumer Protection Act.

Much of this section simply repeats our common law which requires the supplier in circumstances where a specific performance time has not been agreed to perform the agreement within a reasonable period of time. Novel aspects include the right of the consumer to be given a reasonable period of time to inspect the goods once they have been delivered. This Section also seems to override the common law by stipulating that if the supplier delivers the goods or the performance of the service on a date other than that as agreed, the consumer has a choice to stick to the deal or without penalty to cancel the agreement and to treat the delivered goods or performed services as unsolicited goods. . A supplier who has therefore exceeded the promised supply date would be well advised to ask the consumer in advance before delivering the goods or services whether the consumer wishes to cancel the agreement. If he does not and if he then proceeds to do the delivery he is at risk. In terms of Section 32 of the Act any goods left with the consumer in the process of direct marketing will be deemed to be unsolicited goods.

[7] FINDING

Having evaluated the facts and documents presented herein this court is satisfied that it has been proven that the Respondent in the present case breached its obligation in terms of the contract entered into between the parties to deliver the goods purchased by the Plaintiff with the result that the Plaintiff never received and/or enjoyed the use of the headboard purchased from the Defendant. Which therefore entitles the Applicant to cancel the agreement and be entitled to be refunded the R7000,00(seven thousand rand) paid .

It is trite law that where a contract has been cancelled due to breach or otherwise the general rule is that each party is bound to restore to the other that which he/she received in terms of the contract.

[8]

CONCLUSION

Accordingly this court conclude that the Defendant materially breached the lay bye/sale agreement regarding the headboard purchased by the Plaintiff. The Plaintiff was therefore entitled to cancel the agreement and validly did so by communicating this election to the Defendant. The Defendant has failed to raise a necessary defence to the Plaintiff's claim.

[9] ORDER

Having perused all papers filed submissions made the following order is made:

1. The settlement agreement entered between' the parties as admitted in this proceedings marked Exhibit 'A'.
2. The agreement between the parties is ordered cancelled.
3. The Defendant is ordered to refund to the Plaintiff the amount R7000,00(seven thousand rand) payable in the following terms to the Plaintiff's account furnished to the Defendant payable as follows;
 - 3.1 An amount of R3500,00 on/or before 05/08/2024.
 - 3.2 A final instalment of R3500,00 payable on/or before 05/06/2024.
4. The paid amount will be made payable to the Plaintiff's account as provided to the Defendant. Should the Defendant fail to pay the agreed amount on stipulated dated, the whole amount will become due and payable.
5. No order is made to costs save for the costs of enforcing this order by the Plaintiff in case of breach by the defendant.

DATED AT MMABATHO ON THIS THE 26th DAY OF March 2024.

KJP KGOMONGWE

CHAIRPERSON

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/molale-v-elarda-unknown-topic-aconaf-2024>

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