

SOUTH AFRICA / JUDGMENT

Nwadeyi v Tiegert Trucking CC (NCT/106318/2018/75(1)(b)) [2018] ZANCT 129 (24 July 2018) [2018] ZANCT 129

COURT

National Consumer Tribunal

BEFORE

J Simpson

CASE / FILE NUMBER

NCT/106318/2018/75(1)(b)

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

number: NCT/106318/2018/75(1)(b)

In

the matter between:

PAUL
CHIKWE NWADEYI
APPLICANT
and
TIEGERT
TRUCKING CC
RESPONDENT
Coram
Adv.
J Simpson - Presiding Member
Date
of Hearing – 23 July 2018
Date
of Judgment – 24 July 2018

RULING**AND REASONS****THE PARTIES**

1. The Applicant in this matter is Paul Chikwe Nwadeyi, an adult male, residing in Queenstown, Eastern Cape (the “Applicant” or “Mr Nwadeyi”). At the hearing Mr Nwadeyi appeared in person and represented himself.
2. The Respondent is Tiegert Trucking CC, a Close Corporation with its principal place of business at 23 Napier Street, King Williams Town, Eastern Cape (the “Respondent” or “Tiegert”). At the hearing Tiegert was represented by an attorney, Mr Norman Prigge.

APPLICATION TYPE

3. This is an application in terms of Section 75(1)(b) of the Consumer Protection Act, Act 68 of 2008, (hereinafter referred to as “the CPA”).
4. Section 75(1) of the CPA states the following –

“If the Commission issues a notice of non-referral in response to a complaint, other

than on the grounds contemplated in section 116, the complainant concerned may refer the matter directly to –

- (a) ...
- (b) the Tribunal, with the leave of the Tribunal.”

JURISDICTION

5. Section 75(5) of the CPA states that:

“The Chairperson of the Tribunal may assign any of the following matters arising in terms of this Act to be heard by a single member of the Tribunal, in accordance with section 31(1)(a) of the National Credit Act:

- (a)...
 - (b) an application for leave as contemplated in subsection (1)(b)”
6. Accordingly, the Tribunal has jurisdiction to hear this application for leave to refer a complaint to the Tribunal as contemplated under section 75(1)(b).
 7. A single member of the Tribunal may hear the application in accordance with section 75(5)(b) of the CPA.

BACKGROUND

8. Mr Nwadeyi owns a logistics and cartage business. During February 2017 one of his trucks experienced mechanical problems and he took it to Tiegert for repairs. Tiegert provided him with a quote and he authorised the engine overhaul to be done. He also paid R10 000 for the labour with the understanding that he would provide all the parts. On 14 March 2017 Mr Nwadeyi took a used engine to Tiegert for them to install in the truck. After installing the engine Tiegert informed him that the used engine had seized and needed engineering work done on the engine block.
9. The engine block was taken to KWT Engineering for the work to be done in May 2017. The work was done and KWT engineering required payment of R20 978.00 before it would release the engine block.
10. Mr Nwadeyi regards the amount of R20 978.00 as excessive and alleges that he never received a quote for the engineering work and never authorised the engineering work. He obtained quotes from other suppliers for the same work and received quotes averaging R12 000.00. He offers this amount as final settlement for the engineering work done.
11. Mr Nwadeyi first lodged a complaint with The Motor Industry Ombudsman of South Africa (MIOSA) in 2017. On 4 September 2017 MIOSA issued a recommendation that Tiegert must repair the truck on an agreed price and that Mr Nwadeyi had offered to pay R9000.00 to R12 000.00 for the engineering work done on the engine block. It appears Tiegert failed to settle the matter on this basis.
12. Mr Nwayedi then lodged a complaint with the NCC. On 19 March 2018 the NCC issued a letter of non-referral stating that it would not make a recommendation that the vehicle be released without any payment being made.
13. Mr Nwadeyi then filed this application with the Tribunal on 18 April 2018 using Form TLr30A, Form Tl. 73(3) & 75(1)(b) & (2) CPA together with supporting documents and proof of service.

POINTS IN LIMINE

14. Tiegert raised two points in limine. It submits that Mr Nwadeyi owns a registered company called Lyncess Resources International CC and the services were provided to him in his capacity as representative of the company. Mr Nwadeyi therefore cannot pursue this matter in his own name and further has not proven that his annual turnover is less than R2 million as required by the CPA for him to qualify as a consumer.

15. Tiegert further alleges that Mr Nwadeyi has cited the incorrect party as a respondent in this matter, as KWT engineering is the party that provided the engineering services to him directly. Tiegert only provided the contact details for KWT engineering to Mr Nwadeyi and took the engine block to KWT Engineering on his instruction. Mr Nwadeyi interacted with KWT Engineering from that point on and Tiegert cannot be held responsible for the cost of the work done or the fact that no quote was provided by KWT Engineering.
16. During the hearing Mr Nwadeyi disputed that any services were provided to him as a representative of his company. He alleges that all the invoices provided are in his personal name and interactions took place in his personal capacity. He only has two trucks which he uses in his business and the truck that was repaired by Tiegert is registered in his personal name. He initially stated that the truck is registered in the business name but then corrected himself to say it is registered in his personal name. His submissions were made from the bar and not under oath.
17. Mr Nwadeyi further stated that he at all times dealt with Tiegert directly. He instructed Tiegert not to have any work done on the truck without providing him with a quote. He denies that he dealt with KWT Engineering directly and that he has cited the incorrect party as the respondent in the matter.

APPLICATION FOR LEAVE

18. In terms of section 75(1)(b) of the CPA, the Applicant may only refer the matter directly to the Tribunal with leave of the Tribunal.
19. In determining whether the Applicant should be granted leave to refer the matter directly to the Tribunal, the Tribunal must consider the requirements for the granting of “leave”.
20. In *Westinghouse Brake and Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd*[1] it was held that-

“In applications for leave to appeal properly brought before the appropriate court in terms of the old sec 20, read with sec 21 as it then was, the only relevant criteria were whether the applicant had reasonable prospects of success on appeal and whether or not the case was of substantial importance to the applicant or to both him and the respondent.”

21. The Tribunal will therefore, when considering whether to grant the Applicant leave to refer the matter or not, use the same test as applied in the High Court for applications for “leave” and will consider:
 - i. the Applicant’s reasonable prospects of success with the referral; and
 - ii. whether the matter is of substantial importance to the Applicant, the Respondent or both.

22. The points in limine raised essentially relate to the reasonable prospects of success and will therefore be dealt with together with the relevant merits.
23. It is firstly very clear that the matter is of substantial importance to both parties. Mr Nwadeyi has gone to great lengths to pursue the matter through MIOSA, the NCC and finally the Tribunal.
24. Regarding the first point in limine raised, Tiegert has not provided any substantial evidence to substantiate its allegation that the services were provided to Mr Nwadeyi as a company representative. The only evidence Tiegert attached was a letter written by Mr Nwadeyi to the Retail Motor Industry Organisation to complaint about Mr Clive of KWT Engineering. In the letter Mr Nwadeyi refers to his company name. This letter was written after the dispute arose between the parties and does not provide a basis for a finding that Mr Nwadeyi does not have any standing and should have instituted action as a juristic person.
25. Regarding the second point in limine raised, it appears there is a dispute between the parties as to whether or not KWT Engineering provided its services to Mr Nwadeyi or Tiegert directly. Neither party testified at the hearing nor was any evidence submitted by either party to substantiate its allegations. As it stands this issue is a dispute of fact which can possibly only be resolved by the calling of relevant witnesses, including a representative of KWT Engineering.
26. If a finding can be made that Tiegert is the correct party before the Tribunal then the claim would most certainly fall within the CPA. More specifically section 15 of the CPA which requires a service provider to render a quote for work to be done. Non-compliance with this section could render the supplier liable for the work done.
27. It is in the interests of justice that Mr Nwadeyi be granted the opportunity to prove his claim.

CONCLUSION

28. The Tribunal finds that the matter is of substantial importance to the parties and the Applicant has a reasonable prospect of proving his claim.

ORDER

29. Accordingly, the Tribunal makes the following order –

29.1 The Applicant's application for leave to refer the matter directly to the Tribunal is granted; and

29.2 There is no order as to costs.

THUS DONE IN PRETORIA ON THIS 30TH DAY OF JULY 2018

[signed]

Adv. J. Simpson

Presiding Member

[1] 1986

(2) SA 555 (A). Also see *Coertze and Burger v Young* NCT/7142/2012/75(1)(b)&(2)

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