

SOUTH AFRICA / JUDGMENT

Paladh v Adjust 4 Sleep (Adjustable Beds) (NCT/255043/2023/75(1)(b)) [2023] ZANCT 50 (23 November 2023)

[2023] ZANCT 50

COURT

National Consumer Tribunal

BEFORE

M Peenze, A Potwana, C Sassman

CASE / FILE NUMBER

NCT/255043/2023/75(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/255043/2023/75(1)(b)

In the matter between:

TERRENCE ALVIN PALADH APPLICANT

And

ADJUST 4 SLEEP (ADJUSTABLE BEDS) RESPONDENT

Coram:

Dr M Peenze - Presiding Tribunal Member

Dr A Potwana - Tribunal Member

Adv C Sassman - Tribunal Member

TRIBUNAL OWN ACCORD VARIATION OF AN ORDER

BACKGROUND

1. This application came before the National Consumer Tribunal (the Tribunal) on an unopposed basis.
2. On the day of the hearing, 9 November 2023, the applicant, Mr Terrence Alvin Paladh, represented himself.

3. The applicant applied in terms of section 75(1)(b) of the Consumer Protection Act, 68 of 2008 (the CPA) for an order directing a refund of the purchase price of the goods purchased from the respondent. The applicant alleged that the respondent engaged in prohibited conduct.
4. On 9 November 2023, the Tribunal heard oral arguments. After consideration of the applicant's submissions, the Tribunal granted the relief requested.

TYPE OF MATTER AND JURISDICTION

5. This is an own-accord variation of the order the Tribunal issued on 10 November 2023.
6. In terms of section 165(b) of the National Credit Act, 34 of 2005 (the NCA) the Tribunal has jurisdiction to vary the order.

INTRODUCTION

7. After the judgment was issued on 10 November 2023, the Registrar emailed the order to the parties.
8. On 23 November 2023, the Registrar alerted the judgment writer that the order contained a typographical error: the amount of money ordered to be paid by the respondent is inconsistently stated in the

judgment.

ISSUE TO BE DECIDED

9. The applicant's papers before the Tribunal refer to the purchase price as R86 670.00. Therefore, the correct amount in words is "eighty-six thousand six hundred and seventy rands".
10. The order correctly reflects in paragraph 34.3 that the amount of money ordered to be paid by the respondent is "R86 670.00", but in words, it is incorrectly reflected as "sixty-eight thousand six hundred and seventy rands". This mistake occurred due to a clerical error by the Tribunal.
11. Paragraph 34.3 must be varied to reflect the correct amount in words as outlined in the filed documents before the Tribunal. The real intention of the writer of the order was to reflect the purchase amount of the goods purchased by the applicant.

THE LAW

12. The Tribunal could have been considered *functus officio* under common law. Hence, despite this obvious error, we could have been constrained from varying this order.
13. However, section 165(b) of the NCA states-

“The Tribunal, acting of its own accord or on application by a person affected by a decision or order, may vary or rescind its decision or order in which there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission.”

CONSIDERATION OF THE MERITS

14. The Tribunal will be able to correct the mistake in the original published order, mainly relying on the provisions of section 165(b) of the NCA.
15. Furthermore, the Tribunal may also rely on the judgment in *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977(4) SA298(A), where the court held that a judgment may be supplemented where an error was inadvertently committed, provided that the court was approached within a reasonable time.
16. The Tribunal is satisfied that the mistake made in paragraph 34.3 of the original judgment be appropriately amended.

ORDER

17. Accordingly, for the reasons set out above, the Tribunal makes the following order:

17.1 Paragraph 34.3 of the originally published judgment is varied to correctly reflect the purchase amount of the goods in words as “eighty-six thousand six hundred and seventy rands”;

17.2 The amended order, attached to this own accord variation as “Amended order: Terrence Alvin Paladh v Adjust 4 Sleep (Adjustable Beds) NCT255043-2023-Section 75(1)(b)”, must be issued where the correct amount in words appears in paragraph 34.3; and

17.3 No order is made as to costs.

Dated 23 November 2023.

[signed]

Dr MC Peenze

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