

SOUTH AFRICA / JUDGMENT

Valentine v Audio Vision Canal Walk (Pty) Ltd t/a Samsung Store (NCT/244655/2022/75(1)(b)) [2023] ZANCT 39 (16 August 2023)

[2023] ZANCT 39

COURT

National Consumer Tribunal

BEFORE

Z Ntuli, C Sassman, CJ Ntsoane

CASE / FILE NUMBER

NCT/244655/2022/75(1)(b)

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Case Number:

NCT/244655/2022/75(1)(b)

In

the matter between:

DAVID

A VALENTINE

APPLICANT

AND

AUDIO

VISION CANAL WALK (PTY) LTD

RESPONDENT

T/A

SAMSUNG STORE

Coram: Ms
Z Ntuli -
Presiding Tribunal member
Adv
C Sassman -
Tribunal member
Mr
CJ Ntsoane -
Tribunal member
Date
of hearing -
15 August 2023
Date
of judgment -
16 August 2023

JUDGMENT

AND REASONS

APPLICANT

1. The applicant is David A Valentine (applicant), an adult male who is a consumer as defined in section 1 of the Consumer Protection Act, 2008 (the CPA).
2. At the hearing of the matter, the applicant represented himself.

RESPONDENT

3. The respondent is Audio Vision Canal Walk (Pty) Ltd t/a Samsung Store (respondent), a company duly registered in accordance with the company laws of South Africa. The respondent is a supplier, as defined in section 1 of the CPA.
4. At the hearing, Werner Barend Volschenk, the respondent's General Manager, represented the respondent.

TERMINOLOGY

5. 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

6. This is a matter which has been referred to the National Consumer Tribunal (the Tribunal) by the applicant, with the leave of the Tribunal in terms of section 75(1)(b).
7. Section 75(1)(b) 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 the Tribunal, with the leave of the Tribunal.”

BACKGROUND

8. This matter stems from a complaint that the applicant lodged with the National Consumer Commission (the NCC) for possible violation of the CPA. The applicant alleged that he purchased a 55-inch Samsung television set (the TV) with model number QA5[...] from the respondent on 9 December 2021 for R13 000,00. The respondent’s staff unpacked and tested the TV in front of the applicant, and they all confirmed that it was a brand-new TV in good working condition

when it was handed to the applicant.

9. The TV, however, got damaged accidentally while the applicant was unpacking and installing it. The applicant does not dispute that the TV was in working condition when handed to him but said the respondent’s staff should have informed him that it was a sensitive product, given his age and that he was buying a smart TV for the first time. Further, the respondent should have packaged the TV differently to protect the sides.
10. The applicant relied on sections 20 and 22 of the CPA that deal with the right to information in plain language and to return defective or unsafe goods. The relief he sought is compensation or replacement of the TV by the respondent because it got damaged despite him following the instructions when handling it. He said the repair costs were quoted as R12 350,00.
11. The NCC investigated the complaint and issued a notice of non-referral on 22 September 2022, stating that the matter does not raise any facts, which, if true, would give rise to a remedy under the CPA, noting that when handed to the applicant, the TV was in good working condition with no defects. As such, the respondent could not be held liable for the damage caused by the applicant when unpacking and installing the product. Therefore, the remedy sought could not be granted under the CPA.
12. On 14 October 2022, the applicant referred the complaint to the Tribunal in terms of section 75(1)(b) of the CPA. The Tribunal granted leave to refer the complaint on 20 December 2022 and issued the ruling on 9 January 2023. The respondent applied for condonation for the late filing of the answering affidavit in the main matter. The Tribunal granted condonation on 2 May 2023, and the ruling was issued on 5 May 2023. The pleadings closed, and the matter was finally set down for a hearing on 15 August 2023 as an opposed matter.

13. In its answering affidavit, the respondent denied any liability for the damage caused by the applicant to the TV after he took delivery of it, reiterating that the TV was tested in front of the applicant and that the applicant conceded that he accidentally damaged it while unpacking and installing it. It submitted that there were adequate warnings and instructions on handling the product, including illustrations in pictures and graphics, both on the outside and inside of the packaging.

THE HEARING

14. At the hearing (by MS Teams), the applicant submitted that he did not dispute that the TV was in good working condition when he got it. However, it is possible that he or his wife applied pressure and caused the damage. He conducted his own research and noted that there are demonstration videos on handling such products. He believes the respondent should have used the packaging shown in the pictures he submitted with his application. Further, with their knowledge of the sensitivity of this product, the respondent should have actively warned him. He further submitted that repairing the TV would cost nearly as much as he paid to purchase the TV.
15. The respondent stated that the TV was examined and tested in front of the applicant and noted that the applicant does not dispute that he damaged the TV at home. As a company, they handle large volumes of consumer items. As such, although not required by law, they have made it a practice to examine and test products in front of customers before handing them over. The company offers a delivery and installation service at an additional cost, but the applicant declined that service. The respondent can, therefore, not be held liable for the damage caused by customers at their homes, as is the case with the applicant.
16. The respondent advised the Tribunal that it remains its contention that it is not liable for the damage caused by the applicant. However, as a gesture of goodwill, the respondent would like to assist the applicant in repairing the TV and attending to the proper installation of the TV for the applicant at a reduced cost to enjoy the product he purchased. The applicant would only be required to pay about 50% of the repair costs as quoted. The applicant expressed the willingness to resolve the matter.
17. Considering the offer to resolve the matter between the parties, the Tribunal decided to adjourn the hearing to enable the parties to negotiate a settlement of the dispute between them. After a discussion, the parties reached a settlement which they reduced to writing and signed.

THE SETTLEMENT

18. The parties agreed that the written settlement agreement be confirmed as a consent order of the Tribunal.

19. In brief, the settlement agreement provides that the applicant will pay the amount of R6100.00 to the respondent for the respondent and its associated technicians to repair the TV to complete working order and install it at the applicant's home by no later than 30 September 2023. The respondent will provide instructions to the applicant as to the usage and handling of the TV after the repairs to ensure that the applicant has a good knowledge of the set and its handling requirements.
20. Section 138(1)(b), read with section 150 of the National Credit Act, Act 34 of 2005 (the NCA), empowers the Tribunal to make an appropriate order in relation to prohibited or required conduct. Section 150(d) of the NCA empowers the Tribunal to confirm a consent agreement between parties in a matter as an order of the Tribunal.
21. When parties enter into a settlement agreement, they bind themselves contractually to fulfil the terms of that agreement[2]. When that agreement is made an order of the Tribunal, the terms become an enforceable order. Failure to comply with the order of the Tribunal constitutes an offence in terms of section 160 of the NCA.
22. The NCA does not compel the Tribunal to grant a consent order simply because the parties have concluded a settlement agreement. Section 138(1) states that the Tribunal "may" confirm the agreement as a consent order. As a starting point, the Tribunal must satisfy itself that the parties agree that the terms of their settlement agreement be made part of the consent order[3].
23. In *Eke v Parsons*[4] the Constitutional Court held that a court must not be mechanical in its adoption of the terms of a settlement agreement, nor is it obligated to accept anything agreed to by the parties and make it an order. The order can only be granted if it is "competent and proper".

CONCLUSION

24. The Tribunal is satisfied that the parties have duly concluded a settlement agreement which was reduced to writing and signed by or on behalf of the parties who agreed that the settlement agreement be made an order of the Tribunal.

THE ORDER

25. Accordingly, for the reasons set out above, the Tribunal makes the following order:
 - 25.1. The settlement agreement concluded by the parties on 15 August 2023, which is annexed hereto as "Annexure A" is confirmed and made an order of the National Consumer Tribunal in terms of section 138(1)(b) read with section 150(d) of the National Credit Act 34 of 2005.
 - 25.2. There is no order as to costs.

[SIGNED]

ZODWA NTULI - PRESIDING TRIBUNAL MEMBER

Tribunal members Adv C Sassman and Mr CJ Ntsoane 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] Van Zyl v Van Zyl (2020/31538) [2022] ZAGPJHC 649 (14 September 2022), at para 14.

[3] Ex parte Le Grange and Another; Le Grange v Le Grange (984/2011)

[2013] ZAECGHC 75; [2013] 4 All SA 41 (ECG); 2013 (6) SA 28 (ECG) (1 August 2013), at para 15.

[4] (CCT214/14) [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) (29 September 2015), at para 25 - 26.

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