

SOUTH AFRICA / JUDGMENT

Van Eeden v Eezi Move Furniture Removals (Pty) Ltd (NCT/260892/2023/75(1)(b)) [2023] ZANCT 47 (5 October 2023)

[2023] ZANCT 47

COURT

National Consumer Tribunal

BEFORE

C Sassman, P Manzi-Ntshingila, A Potwana

CASE / FILE NUMBER

NCT/260892/2023/75(1)(b)

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IN

THE NATIONAL CONSUMER TRIBUNAL HELD

IN

CENTURION

Case

number: NCT/260892/2023/75(1)(b)

In

the matter between:

SUSANNA

ENGELA HELENA VAN EEDEN APPLICANT

and

EEZI MOVE FURNITURE

REMOVALS (PTY) LTD RESPONDENT

Coram:

Adv C Sassman -

Presiding

Tribunal member

MS P

Manzi-Ntshingila -

Tribunal

member

Dr A

Potwana -

Tribunal

member

Date

of hearing -

3

October 2023

Date
of judgment -
5
October 2023

JUDGMENT

AND REASONS

THE PARTIES

1. The applicant is Susanna Engela Helena Van Eeden (the applicant). The applicant is a consumer, as defined in section 1 of the Consumer Protection Act 68 of 2008 (the CPA). At the hearing, the applicant represented herself and was assisted by her husband, Gideon van Eeden.
2. The respondent is Eezi Move Furniture Removals (Pty) Ltd. The respondent is a supplier, as defined in section 1 of the CPA. Josias Venter, an attorney at JV and Company Incorporated Attorneys, represented the respondent at the hearing.

TERMINOLOGY

3. A reference to a section in this judgment refers to a section of the CPA.

APPLICATION TYPE

4. This is an application in terms of section 75(1)(b). In this application, the applicant, with leave granted by the Tribunal, seeks redress against the respondent.
5. The applicant alleges that the respondent contravened section 54(1) by performing a service in a manner and quality below what persons are generally entitled to expect.

BACKGROUND

6. In May 2022, the applicant contracted the respondent to collect, store, and move several of her furniture items and her piano. The items were collected from her home in Bellville, stored at the respondent's storage facility in Brackenfell, and then

delivered to the applicant's new address in Greyton. The applicant alleges that the respondent damaged several of her items,

including her piano, during this process. The applicant demanded compensation from the respondent, who refused to pay her the amount

requested. Instead, the respondent offered a lesser amount in an attempt to settle the matter, but the applicant refused the offer.

The applicant submits that paying to repair the damaged items, will cause her undue financial prejudice. The applicant alleges that the respondent was unprofessional and that the quality of service offered was not good. The respondent has opposed the application and denies the applicant's allegations. The respondent maintains that its employees at all times acted professionally and in accordance with its mandate. The respondent avers that the applicant signed its terms and conditions and knew the risks of moving furniture items. The respondent further maintains that the service offered to the applicant was of the quality that persons are generally entitled to expect.

THE APPLICANT'S

SUBMISSIONS

7. The applicant submitted that she had previously contracted the respondent to move certain items, and its service was satisfactory.

However, in this instance, she cannot say the same. She alleges that certain items were loaded onto an open trailer where they could easily be damaged. When collecting her items, steel items were placed on an open trailer, which is understandable as they are hard-wearing. However, when the respondent delivered her items to Greyton, her piano and certain wooden items were transported on an open trailer. She submits that this was unacceptable as the items could also have been damaged by rain in addition to the damage caused. She further alleges that one of the respondent's employees was sick and that she constantly had to remind them to be careful while handling her items. She maintains that she paid an additional cost for certain items to be wrapped and did not feel it necessary for items to be "crated" as this is only commonly done when transporting goods internationally. The applicant states in her application that she needs to pay for the repairs to her furniture and seeks a certificate in terms of section 115(2)(b) to approach a civil court to claim damages.

THE RESPONDENT'S

SUBMISSIONS

8. The respondent submitted that it received a total of R25 610, 21 (twenty-five thousand, six hundred and ten rand and 21 cents) from the applicant, which included storage costs. The applicant was advised of specialist services and wrapping options at an additional cost but refused those options. The respondent always exercises the same degree of care whether moving items on a truck or a trailer. The applicant signed the respondent's terms and conditions and was made aware of the risks involved. By signing the terms and conditions, the applicant indemnified the respondent from the liability she now seeks to invoke. The damage to the items is superficial and can be repaired. Moving furniture is inherently risky, and the road to the applicant's house in Greyton is very bumpy. On this road, the respondent suspects that the damage was caused to certain items.

9. The respondent referred the Tribunal to the case of *Transnet v MV Stella Tingas*,^[1] where the court remarked as follows:

“I think, that to qualify as gross negligence the conduct in question, although falling short of dolus eventualis, must involve a departure from the standard of the reasonable person to such an extent that it may properly be categorized as extreme; it must demonstrate, where there is found to be conscious risk-taking, a complete obtuseness of mind or, where there is no conscious risk-taking, a total failure to take care. If something less were required, the distinction between ordinary and gross negligence would lose its validity”.

10. The respondent maintains that it did not act with gross negligence when performing the services requested by the applicant, and on that basis, it is not liable for the damage caused, and the application should be dismissed.

APPLICABLE SECTIONS OF THE ACT

11. Section 54(1)(b) states that when a supplier undertakes to perform any services for a consumer, the consumer has the right to the performance of those services, in a manner and quality that persons are generally entitled to expect. Section 54(1)(d) states that the consumer's property must be returned in at least as good a condition as when the consumer made it available to the supplier to perform the service.

CONSIDERATION OF THE EVIDENCE

12. The respondent does not dispute the damage caused to the applicant's items but submits that the service of moving furniture has certain risks attached, which were pointed out to the applicant in its terms and conditions. The respondent further submits that by signing the terms and conditions, the applicant has indemnified the respondent from the damage caused and can only hold the respondent liable if it is found that the respondent acted with gross negligence in transporting the items.
13. Section 51(1)(b) states that a supplier must not make a transaction or enter into an agreement with a consumer that contains a term or condition to waive or deprive a consumer of a right stated in the CPA. It further states that the supplier must not make such a transaction or agreement with a consumer to absolve the supplier of its statutory obligations or duties in terms of the CPA or aim to override the effect of any provision of the CPA.
14. The Tribunal rejects the respondent's submission that it can only be held liable if it acted with gross negligence, as this contradicts the rights afforded to consumers under section 54. The Tribunal is persuaded that the respondent did not act maliciously in providing a service to the applicant. However, it failed to offer its service with the necessary degree of care which persons are generally entitled to expect when contracting a similar supplier. This failure has caused the applicant financial prejudice.

CONCLUSION

15. The Tribunal is convinced that the respondent failed to perform its services in a manner and with the level of quality that persons are generally entitled to expect. On this basis, the respondent is found to have engaged in prohibited conduct by failing in its statutory duty in terms of section 54(1)(b) and (d). This failure has caused the applicant financial prejudice, and therefore, the applicant is entitled to compensation from the respondent.

ORDER

16. Accordingly, the Tribunal makes the following order:

16.1 The respondent has contravened section 54(1)(b) and (d) of the CPA;

16.2 The respondent's contravention of section 54(1)(b) and (d) of the CPA is declared prohibited conduct;

16.3 The applicant may approach the Chairperson of the Tribunal for a certificate in terms of section 115(2)(b) of the CPA to claim damages in a civil court; and

16.4 There is no cost order.

Adv C Sassman

Presiding Tribunal member

Tribunal members Ms P Manzi-Ntshingila and Dr A Potwana concur.

[1] Transnet Ltd t/a Portnet v MV 'Stella Tingas' and Another (378/01)

[2002] ZASCA 145; [2003] 1 All SA 286 (SCA) (27 November 2002), see paragraph 7.

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