

**IN THE CONSUMER AFFAIRS COURT FOR THE NORTH WEST PROVINCE  
HELD AT MMABATHO**

Case number: NW11/2018

In the matter between:-

**GAOGAKWE JUNIOR MOTLHASEDI**

**PLAINTIFF**

and

**ANAS AHMED SHAIKH T/A KOPANO DISTRIBUTOR  
PROJECT CC.**

**DEFENDANT**

Coram: J.Nkomo, K.Kgomongwe and Khula

Heard: 24 July 2018

Delivered: 26 July 2018

**In summary:** Claim for repayment of R 950.00 after supplier has failed to deliver the goods on the agreed date or after a reasonable time following conclusion of consumer agreement- Section 19(2)(a)(i) of the Consumer Protection Act 68 of 2008 considered and applied. Defendant in default.

**Result:** Consumer agreement cancelled, defendant to pay R 950.00 immediately as well as costs of enforcement in the competent court.

<b>JUDGMENT</b>
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**John Nkomo** (Members Kgomongwe and Khula concurring)

Introduction

1. This matter relates to the purchase of concrete aggregate and the failure by the supplier to deliver such material. Despite being served with summons, the respondent did not attend the proceedings. The plaintiff is Gaogakwe Junior Motlhasedi, an adult male person of Lokaleng Village in Mmabatho. The first

respondent is Anas Ahmed Shaikh who trades as Kopano Distributor Project CC from 6 Carrington Street in Mafikeng. As said before, the respondent did not attend the proceedings on 24 July 2018. A default judgment was announced ex tempore. This is now the written account of the proceedings.

### Background

2. The plaintiff purchased 3 Cubic meters of concrete aggregate ("the goods") from the defendant on 05 March 2018 for the amount of R 950.00 that was paid in two tranches, R 550.00 on 05 March 2018 and R 400.00 that was paid in April 2018. The purchase price included the costs of the transportation of the goods. Having paid the balance of R 400.00 the plaintiff was promised that the goods would be delivered. This did not happen and as such the plaintiff returned to the defendant's business premises. He was told that the failure to deliver was as a result of the truck used for delivery being broken. He was told to wait for a further two days. Still no delivery took place.

3. It is as a result that the plaintiff reported a case for investigation by the Office of the Investigation of Unfair Business Practices in the North West Province. This was on 21 May 2018. A procedural letter from the office of the Consumer Protector dated 05 June 2018 and delivered upon the respondent on 11 June 2018<sup>9</sup> seems not to have yielded any results hence the issuing of the summons on 25 June 2018. The summons was served on 25 June 2018. It calls upon the respondent to attend court on 24 July 2018 and to answer to the allegations of having failed to deliver the goods and a prayer for the refund of the amount of R 950.00.

4. As already stated before, the plaintiff was in attendance but the defendant was absent on 24 July 2018. The matter was then proceeded with in the absence of the defendant. The plaintiff's evidence was taken under oath. His evidence is as succinct as it has been referred to in the preceding paragraphs. He prayed for an order in terms of which the defendant is to be ordered to refund the amount of R 950.00 as paid.

### The applicable statutory provision

5. Section 19(2)(a)(i) of the Consumer Protection Act<sup>1</sup> provides as follows:-

*“Unless otherwise expressly provided or anticipated in an agreement, it is an implied condition of every transaction for the supply of goods or services that-*

*(a) the supplier is responsible to deliver the goods or perform the services-*

*(i) on the agreed date and at the agreed time, if any, or otherwise within a reasonable time after concluding the transaction or agreement;”*

### Application of the law to the facts

6. It is clear from the uncontroverted evidence of the plaintiff that the defendant failed to deliver the goods on the specified date or within a reasonable time after the conclusion of the agreement. This is in contravention of section 19(2)(2)(i) of the CPA. On this score alone, the plaintiff is entitled to cancel the contract and to claim the monies paid.

### In conclusion

Having considered all of the above, the following judgement is issued:-

1. The consumer agreement between the parties as concluded on 05 March 2018 is ordered cancelled with effect from 24 July 2018.

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<sup>1</sup> Act 68 of 2008 (the CPA).

2. Consequent to the above, the defendant is ordered to immediately refund the amount of R 950.00 to the plaintiff.
3. The respondent shall be liable to the plaintiff for the court costs that may be incurred in the process of enforcing this judgement in the competent court.

Dated at Mmabatho on this the 24<sup>th</sup> day of July 2018.

John Nkomo  
Chairperson

Plaintiff: Gaogakwe Junior Motlhasedi  
Represented by Office of the Consumer Protector  
Office of the Investigation of Unfair Business Practices  
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Mmabatho  
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Defendant: Anas Ahmed Shaikh t/a Kopano Distributor & Projects CC  
Defendant  
6 Carrington street  
Mafikeng