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IN THE KWAZULU-NATAL CONSUMER TRIBUNAL HELD AT DURBAN

CASE NO: KZNCT04-24

IN THE MATTER BETWEEN:-

KWAZULU-NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

RODNEY YAGAMBARAM MOONSAMY

SECOND PLAINTIFF

AND

**CUPBOARD TRENDZ t/a
HANDA INTERIORS (REG NO: 2017/070824/07)**

FIRST DEFENDANT

AND

AVINASH BILLY

SECOND DEFENDANT

HEERASHA ANNIRUTH

THIRD DEFENDANT

JUDGMENT AND REASONS

Coram:

Prof B. Dumisa	Chairperson
Ms. N. Cawe	Deputy Chairperson
Ms. A. Sewpersad	Alternate Deputy Chairperson

Date of Hearing	18 July 2024
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Date of Judgement

18 August 2024

PLAINTIFFS

FIRST PLAINTIFF

1. The First Plaintiff in this matter is the **OFFICE OF THE KWAZULU NATAL CONSUMER PROTECTOR**, established in terms of Section 5 of the KwaZulu-Zulu-Natal Consumer Protector Act 04 of 2013 (the "Act") (hereinafter referred to as "the First Plaintiff"), with Head Offices at 270 Jabu Ndlovu Street, Pietermaritzburg, in the Province of KwaZulu- Natal.

2. The Office of the Kwazulu-Natal Consumer Protector falls under the Department of Economic Development, Tourism and Environmental Affairs (EDTEA) in the Province of Kwazulu-Natal.

3. At the hearing, the First Plaintiff was represented by Mr R. Moodley, the Deputy Director in the Office of the Consumer Protector KwaZulu-Natal, in the employ of the First Plaintiff.

4. The First Plaintiff's Investigation Report was deposed to by **TEREZA NAUDE**, Assistant Director: Complaints Handling within the Office of the KwaZulu-Natal Consumer Protector, at its Head Offices at 270 Jabu Ndlovu Street, Pietermaritzburg, in the Province of KwaZulu-Natal.

SECOND PLAINTIFF

5. The Consumer, who is the Second Plaintiff in this matter is **RODNEY YAGAMBARAM MOONSAMY**, a major male who is a resident of G[...] A[...], in the Province of KwaZulu-Natal (hereinafter referred to as "the Second Plaintiff" or "the Consumer").

6. The Second Plaintiff lodged his complaint against the First and Second Defendant on the 6th of February 2024.

7. At the hearing, the Second Plaintiff represented himself.

DEFENDANTS

8. The First Defendant is **CUPBOARD TRENDZ t/a HANDA INTERIORS**, with Company

Registration number 2017/070824/07, with its principal place of business situated at Meltonwood Crescent, Woodview, Phoenix, Durban, KwaZulu-Natal which address it has chosen as its domicillium citandi et executandi (hereinafter referred to as "the First Defendant").

9. The Second Defendant is **AVINASH BILLY**, a Director of Cupboard Trendz t/a Handa Interiors, a major male who is a resident of M[...] C[...], Woodview, Durban, KwaZulu-Natal (hereinafter referred to as "the Second Defendant."

10. The Third Defendant is **HEERASHA ANNIRUTH**, a Director of Cupboard Trendz, t/a Handa Interiors, a major female who is a resident of M[...] C[...], Woodview, Durban, Kwazulu-Natal(hereinafter referred to as the "Third Defendant."

11. The Defendants were served with the Summons to attend the hearing on 18 July 2024¹ and despite having received the Summons failed to file an Intention to Oppose the matter and at the time of the hearing were not in attendance. The Tribunal was satisfied that the Defendants were aware of the matter proceedings and that it was entitled to proceed with the matter and hence the matter was heard on a default basis.

APPLICATION TYPE AND ORDER SOUGHT

12. This KZN Consumer Tribunal (hereinafter referred to as "the Tribunal) derives the jurisdiction for hearing this matter under Section 10 and Section 21 of the KwaZulu-Natal Consumer Protection Act,4 of 2013(the KZNCPA). This matter is in terms of Section 54(1)(a) and Section 55 of the Consumer Protection Act 68 of 2008. (the CPA)The Second Plaintiff sought an order against the First and Second Defendant in the following terms:

12.1. The First and Second Defendant's Conduct is declared prohibited conduct in contravention of Section 54(1)(a) and Section 55 of the Consumer Protection Act 68 of 2008.

12.2. Directing the First and Second Defendants to refund the Second Plaintiff in the sum of R32 500-00(thirty-two thousand and five hundred rands) based on the total amount paid to the First and Second Defendants less the incomplete work already done.

¹ Page 35 of Bundle

12.3. To order the First and Second Defendants to pay the above amount within 15 days of the judgment, to the Second Plaintiff's bank account.

12.4. Directing the First and Second Defendants to refrain from conducting future business in a manner that is inappropriate and

12.5. Directing the Defendant's jointly and severally, the one paying the other to be absolved, to pay an administrative penalty in a sum to be determined by the Consumer Tribunal and/or making any other appropriate order contemplated under Section 4(20(b)(ii) of the CPA and

12.6. Further and/or alternative relief.

MATTERS TO BE DECIDED

13. The Tribunal has to decide whether:

13.1. The Defendants breached the provisions of the Act as alleged; and

13.2. The appropriate relief to be granted.

BACKGROUND

14. The Second Plaintiff submitted as follows:

14.1. On or about 2nd October 2023 he responded to an advertisement on Facebook and contacted the Defendants, more specifically the Second and Third Defendants who identified themselves as the owners of the First Defendant and undertook to provide the manufacturing and installation of a television unit and a coffee bar at his residence. The Third Defendant advised him that the work would take approximately one month to complete but will be finalized before Christmas. She advised that an immediate part payment of R42 00-00(forty-two thousand rands) was required to be paid

and thereafter the balance would be paid on completion of the work.²

14.2. On 15th November 2023 he paid an amount of R42 000-00(forty-two thousand rands) into the First Defendant's bank account as requested by the Second Defendant.³ He has fully complied in terms of the agreement.

14.3. The Third Defendant arrived at his house along with two of her employees to carry out the services paid for as per the agreement. The commencement of building the TV unit was on or about the first week of December 2023, however the installation of the coffee bar did not occur. At this point the Second Defendant was contacted and he insisted that more monies be paid for the commencement of work in respect of the bar. He brought to his attention that it was agreed between them that all further payments would be made after the work was completed and that he failed to provide the plans for the coffee bar which he needed to approve prior to installation. The Third Defendant became very aggressive and uninterested in communicating further and he then requested that the work on the TV unit be completed and that he be refunded the monies paid in respect of the coffee bar. The Third Defendant, however, demanded more monies. He contacted the Third Defendant telephonically, but she did not answer his calls and further blocked him on Facebook and Whatsapp messaging communication platform. To date he has not seen the plans for the coffee bar which was allegedly being prepared and neither has the coffee bar been installed or any material purchased for it.

14.4. He contacted the Second and Third Defendants telephonically, but all attempts have failed to secure the completion of the work. Consequently the work remains incomplete to date.⁴

14.5. He then lodged a complaint against the First, Second and Third Defendants on the 6th of February 2024 with the Kwazulu-Natal Consumer Protector. Ms Tereza Naude, the Investigator handling the case attempted to investigate the complaint, however the Defendants refused to participate in the investigations by attending a meeting with himself as was recommended by the Investigator. All communications from the Investigator and himself were ignored.⁵

² RM1-Page 10 of Bundle

³ RM1-Page 10 of Bundle

⁴ RM3- Pages 14-19 of Bundle -Messages and emails between Second Plaintiff and Defendants

⁵ Pages 27 to 33 of Bundle-Communications between the Plaintiffs and Defendants

14.6. It is evident that the Defendants have no intention to carry out the incomplete TV unit or to install the coffee bar. This is a clear indication that certain consumer rights contained in the Consumer Protection Act 68 of 2008 were violated. It would be in his best interests if this complaint was heard by the Consumer Tribunal. The relief which he seeks is a refund of R32 000-00(thirty-two thousand rands) paid to the First Defendant for the coffee bar and the incomplete TV unit. He believes that the material and work done in respect of the TV unit has an approximate cost of R10 000-00 (ten thousand rands) this costing is based on seeking the opinion of other shopfitters whom he consulted with to provide a quotation on the completion of the incomplete work. He cannot trust the Defendants as the trust relationship has broken down. The refund sought will be used to find another service provider to complete the incomplete TV unit and to manufacture and install the coffee bar.

THE FIRST PLAINTIFF'S ATTEMPTS TO RESOLVE THE COMPLAINT

15. The First Plaintiff submitted that all attempts to resolve this complaint amicably had failed:

- a) The Defendants failed to cooperate with the First Plaintiff.
- b) Based on the Defendant's failure to cooperate with the First Plaintiff, the latter decided to refer the matter to the KZN Consumer Tribunal for adjudication.

THE HEARING

16. The hearing was held on 18th July 2024 at the offices of the Consumer Protector at the Marine Building,

17. The Defendants did not file any intention to defend the matter and were not present at the hearing.

18. At the hearing, the First Plaintiff and the Second Plaintiff confirmed the details of the complaint as contained under the background above.

APPLICABLE SECTIONS OF THE CONSUMER PROTECTION ACT 68 OF 2008

19. **Section 19**

Consumer's right with respect to delivery of goods or supply of services

"(1)

(2) 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;

(ii) at the agreed place of delivery or performance; and

(iii) at the cost of the supplier, in the case of delivery of goods; or

20. **Section 54**

Consumer's rights to demand quality service

(1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to –

(a) The timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;

(b) The performance of the services in manner and quality that persons are generally entitled to expect;

(c) The use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of services; and

(d) ...

(2) If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either-

(a) Remedy any defect in the quality of the services performed or goods supplied;
or

(b) Refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.

21. **Section 55**

Consumer's rights to safe, good quality goods

(1)

(2) Except to the extent contemplated in subsection (6) every consumer has a right to receive good that-

(a) Are reasonably suitable for the purpose for which they are generally intended;

(b) Are of good quality, in good working order and free of any defects;

(c) Will be useable and durable for a reasonable period of time, having regard to the use to which they normally would be put and to all the surrounding circumstances of their supply; and

(d) Comply with any applicable standards set under the Standards Act, 1993 (Act 29 of 1993), or any other public regulation.

CONSIDERATION OF THE EVIDENCE BEFORE THE TRIBUNAL

22. It is common cause that the parties entered into an agreement of contract in terms of which the Defendants undertook to install a TV wall unit and a bar. The term of the agreement was that a seventy five percent deposit of R42 000-00(Forty-two thousand rands) was required and a 20% Progress Draw on Fitment of R12 000-00(twelve thousand rands) was required with the balance of R3 000-00(three thousand rands) to be paid on completion.

23. The Second Plaintiff paid the deposit of R42 000-00 (Forty-two thousand rands) into an account belonging to First Defendant.

24. The Second Plaintiff had a reasonable expectation that work would be completed in terms of Quote 15023 which he received from the Defendants.⁶

25. Based on the Second Plaintiff's testimony and in the absence of a version to the contrary the Second Plaintiffs unchallenged version is accepted, and he is entitled to the relief which he seeks, i.e. a refund of R32 000-00(thirty-two thousand rands).

26. The Second and Third Defendants in their conduct have demonstrated that they have no intention of complying with the terms and conditions of the agreement which they have entered into. The First and Second Defendants' conduct is a contemptuous disregard of the Second Plaintiffs rights, and as such their conduct is tantamount to prohibited conduct as envisaged in the "CPA."

27. Given the conduct of the First and Second Defendants in this matter and the attitude displayed towards the Second Plaintiff in not complying with the terms and conditions of the agreement, despite having received the deposit as requested, in not cooperating with the Office of the Consumer Protector by not agreeing to meet with the Second Plaintiff to resolve the matter amicably and in not responding to the summons, which was served on them, the Tribunal is of the opinion that it is appropriate that an administrative penalty should be imposed. This will serve as a deterrent to offenders who may be contemplating shoddy services to consumers.

ORDER

28. Accordingly, the Tribunal grants an order against the First and Second Defendants in the

⁶ Pages 9 to 13 of Bundle

following terms:

- a) The First and Second Defendant's conduct is declared prohibited conduct in contravention of section 19(2)(a)(i) and section 47(3) of the Consumer Protection Act No. 68 of 2008.
- b) The Defendants are ordered to refrain from conducting themselves in such a manner forthwith.
- c) The First and Second Defendants are jointly and severally liable to the one paying the other to be absolved for the refund to the Second Plaintiff of the sum of R32 000-00 (thirty-two thousand rands) being the cost of completing the work.
- d) The First and Second Defendants are ordered to pay interest on R32 000-00 at the rate of 11.75% p.a from 18 July 2024 to the date of payment both days inclusive.
- e) The First and Second Defendant are ordered to make payment within **15** days of the granting of this Order to the Second Plaintiff into the Second Plaintiffs Bank Account as follows:

BANK NAME	: FIRST NATIONAL BANK
ACCOUNT NAME	:RODNEY YAGAMBARAM MOONSAMY
ACCOUNT NUMBER	:6[...]
REFERENCE	: KZNCT 04/2024 Moonsamy v Cupboard Trendz

- f) The First and Second Defendants being jointly and severally liable , the one paying the other to be absolved are ordered to pay an administrative penalty of R25 000-00(Twenty-Five Thousand Rands) within 30 days of this judgment to the bank account of the Kwazulu-Natal Provincial Revenue Fund:

Banking details are as follows:

BANK NAME	ABSA
ACCOUNT NAME	KZN PROV-GOV-TREASURY

ACCOUNT TYPE	CURRENT ACCOUNT
ACCOUNT NO	4[...]
BRANCH NAME	ABSA BUSINESS CENTRE-KZN
BRANCH CODE	630495
REF	KZNCT 04/2024 Moonsamy v CUPBOARD TRENDZ

g) The First and Second Defendants are forthwith warned to refrain from conducting future business in the manner that is the subject matter of this complaint and that is in contravention of the CPA.

Ms. A. Sewpersad

Alternate Deputy Chairperson

Prof B. Dumisa (Chairperson) and Ms N. Cawe (Deputy Chairperson) concurred.