

PROCEEDINGS BEFORE THE CONSUMER AFFAIRS COURT FOR THE  
NORTH WEST PROVINCE

**CASE NO: NW29/2024**

In the matter between: -

**MR OLA HENDRICK PHETE**

**PLAINTIFF**

**And**

**MORNE SCHEEPERS//BOSHOEK BOORWERKE**

**DEFENDANT**

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**JUDGEMENT**

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**DELIVERED ON : 04/09/2024**

**CORAM: KJP KGOMONGWE (TJ Rakoloka and L Kortjas Concurring)**

**For Plaintiff      - Consumer Protector – Mr SE. Letsogo**

**For Defendant    - Morne Schepers**

**SUMMARY:**

Allegations of failure to deliver goods that are free from defects.

**RESULTS:**

Settlement reached by the parties on the matter cancellation of the agreement and plaintiff to be refunded.

## **THE PARTIES**

[1] The Plaintiff is Mr Ola Hendrick Phete an adult male residing at Geelhout Park Rustenburg.

[2] The defendant is Morne Scheepers t/a Boshhoek Boorwerke at farm Codrus Boshhoek Rustenburg.

## **[3] BACKGROUND**

Plaintiff engaged the services of the defendant for drilling a borehole and paid an amount of R24 200.00 to the defendant on 08/08/2023 per EFT payment. After the drilling was completed the steel casing pipes that were installed were pulled out of the borehole by the drill. The defects and complaints about the defective borehole was brought to their attention of the defendant to remedy the defects which plea the defendant undertook to honour and remedy the defects.

The plaintiff referred the complaint to the Consumer Affairs office after the defendant failed and refuse to remedy the defective borehole further demanded cancellation of the agreement and demanded payment of monies he paid to the defendant. Defendant failed to remedy the defects on the borehole.

The defendant filed notice to defend the action and filed three special pleas and pleaded to the plaintiff's particulars of claim.

## **[4] Defendant's 1<sup>st</sup> Special Plea**

On the special plea it was pleaded that the cited defendant Morne Scheepers denied that he is the correct defendant in this matter and he is wrongly cited as the defendant as he is not apart to the agreement

between the parties as the plaintiff entered into an agreement with Boshoeck Boorwerke(pty)Ltd that Morne Scheepers is merely an employee of Boshoeck Boorwerke(pty)Ltd.

**[5] 2<sup>nd</sup> SPECIAL PLEAS**

The defendant raised a second special plea to the effect that after receipt of the complaint defendant tendered to visit to inspect the defective borehole, however the plaintiff denied them access to the premises thus the plaintiff's claim was prematurely before the Consumer Affairs Courts as he had not been afforded an opportunity to rectify the defects.

**[6] 3<sup>rd</sup> SPECIAL PLEAS**

Relates to non-joinder of the interested party Boshoesk Boorwerker(pty)Ltd to the proceedings as they are an entity with own legal capacity.

**[7] 4<sup>TH</sup> SPECIAL PLEA**

Relates to a claim for no cause of action as the plaintiff failed to set out the terms and conditions of the contract concluded between the parties proceeding before court.

**[8]** The matter presented itself before court and was postponed for parties to file and make their submissions and arguments on the special plea.

**[9]** On the return date both parties appeared and informed the court that there are possible settlement negotiations and proposals and sought indulgence from the court to allow the negotiations and possible

settlement on the matter. The matter was then accordingly postponed to 19<sup>th</sup> August 2024 to allow possible settlement negotiations.

**[10]** On 19/08/2024 the matter appeared before court and the Consumer Protector including the plaintiff were present and the defendant's legal representative was also present, the defendant was absent and legal representative applied for postponed to obtain instructions from the absent client to proceed with the negotiations and/or special plea submissions. The matter was postponed to 4/09/2024 for hearing.

### **[11] THE HEARING**

On 04/09/2024 the parties appeared before court and the defendant was present and the legal representative absent, A notice of withdrawal as attorneys of record was served and filed.

**[12]** The consumer protector Mr Letsogo presented a settlement proposal which the defendant confirmed and both parties applied that it be made an order of court.

### **EVALUATION OF PAPERS FILED AND MERITS**

**[13]** As the parties did not proceed to file and argue the special pleas raised and the matter was finalized on the basis of the settlement agreement which was made on order of the court as prayed for the parties the court will not pronounce on the special pleas raised by the plaintiff.

**[14]** The court wish however in this judgment reflect on an aspect raised by the plaintiff in a special plea to the effect that the plaintiff was wrongly cited on the particulars of claim as he was merely an employee to the defendant and not party to the contract concluded.

**[15]** According to the papers filed payment was made to the account which the defendant furnished to the plaintiff and coincidentally the account holder is the defendant.

**[16]** On the appearance of 04/09/2024 the defendant Morne Scheepers appeared in court and confirmed that he is indeed the defendant trading as Boshhoek Boorwerke and admitted liability and undertook to refund the plaintiff. It is also noted that Mr Morne Schepers confirmed that he is the director of Boshhoek Boorwerke.

Having regards to the above the court is satisfied that the defendant was properly cited and joined to the proceedings.

**[17]** The court further finds that the Defendant was in breach of the provision of Section 55 read with 56 of the consumer protection Act 68 of 2008 in that he failed to supply to the Plaintiff goods of a good quality and free from defects suitable for purposes for which they were intended.

Accordingly the court is satisfied that the settlement presented accords with prescripts of the Consumer Protection Act and the common law principles on contracts.

### **ORDER**

1. The settlement agreement is admitted and marked Exhibit "A".
2. The Defendant is ordered to refund to the Plaintiff the amount of R29 524.00 payable in the following terms:

- 2.1. An amount of R10000.00 is payable on or before 04/09/2024
  - 2.2. An amount of R10000.00 is payable on or before 20/09/2024
  - 2.3. The balance of R9 524.00 is payable on or before 04/10/2024
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3. The Defendant is ordered to remove and collect the casings at his cost from the Plaintiff premises on or before 06/09/2024.
  4. No order to costs is made save for the costs of enforcement of this order by the Plaintiff should the Defendant fail to make payment on stipulated date.

DATED AT RUSTENBURG ON THIS THE 04<sup>TH</sup> OF SEPTEMBER 2024.

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KJP KGOMONGWE  
CHAIRPERSON

