

IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENBTURION

CASE NO: NCT/116213/2018/75(1)(b)

In the matter between:

NTHABISENG INNOCENTIA KRAAI

Applicant

and

RNF ENGINEERING & MAINTENANCE (PTY) LTD

1st Respondent

MR. Richard Carl Froneman (also known as “Damand”)

2nd Respondent

TRIBUNAL PANEL

PRESIDING PANEL MEMBER: Ms D Terblanche

PANEL MEMBER: Dr. M Peenze

PANEL MEMBER: Mr A Potwana

DATE OF HEARING: 01 APRIL 2019

DATE OF JUDGMENT: 18 APRIL 2019

JUDGMENT AND REASONS

THE PARTIES

1. The Applicant in this matter is Ntabiseng Innocentia Kraai, an adult female, hereinafter referred to as “the Applicant”.
2. The First Respondent is RNF Engineering and Maintenance (Pty) Ltd, hereinafter referred to as “RNF”.

3. The Second Respondent is Mr Richard Carl Froneman (also known as “Damand”), hereinafter referred to as “Froneman” or “second Respondent”.

TYPE OF APPLICATION

4. On or about 28 September 2018, the Applicant filed this application with the National Consumer Tribunal (hereinafter referred to as the “Tribunal”). The application is in terms of Section 75(1)(b) of the Consumer Protection Act, Act 68 of 2008 (hereinafter referred to as the “CPA”). The section allows a consumer to apply for leave to the Tribunal to refer a matter that was non-referred by the National Consumer Commission (hereinafter referred to as “the NCC”) to the Tribunal.
5. Section 75(1) of the CPA states the following:
“If the Commission issues a notice of notice-referral in response to a complaint, other than on the grounds contemplated in section 116, the complainant concerned may refer the matter directly to –
 - (a)...*
 - (b) the Tribunal, with leave of the Tribunal.”*
6. Section 75(5) of the CPA states that:
“The Chairperson of the Tribunal may assign any of following matters arising in terms of this Act to be heard by single member of the Tribunal, in accordance with section 31(1)(a) of the National Credit Act:
 - (a)...*
 - (b) an application for leave as contemplated in subsection (1) (b)”*
7. A single member of the Tribunal heard the application for leave to refer the matter directly to the Tribunal in accordance with section 75(5)(b) of the CPA. The member of the Tribunal granted the Applicant leave to refer the matter directly on the 21st of December 2018.

8. A full panel of the Tribunal heard the main merits of the matter on the 1st of April 2019. This judgment and reasons for it follows the finalisation of the hearing.

Default

9. On or about 28 September 2018, the Applicant filed this application. In terms of Rule 13 of the Rules of the Tribunal, the Respondent had to respond within 15 days by serving an answering affidavit on the Applicant. Neither of the Respondents did so.
10. Rule 25(3) allows the Tribunal to make a default order after considering or hearing any necessary evidence and satisfied that the application documents were adequately served.
11. The Registrar set the matter down to be heard on 1 April 2019 on a default basis due to the pleadings being closed.
12. On the date of the hearing namely, 1 April 2019, the second Respondent appeared in person on his own behalf.
13. From this appearance and the submissions from the Applicant and the Second Respondent it transpired that the second Respondent –
 - 13.1. had been served with the application and the set-down notice of the application for the hearing on 1 April 2019;
 - 13.2. at no point approached the Tribunal to place himself on record and defend the application and the allegations made against him;
 - 13.3. previously indicated that he wishes to be heard and then did not appear on the date as advised and agreed to, after the application for leave to refer had been postponed accommodating him; and

13.4. again approached the Tribunal for a postponement of the hearing set down for 1 April 2019, despite not having entered an appearance to defend the application nor providing good cause for the matter to be postponed.

14. The Tribunal satisfied itself -

14.1. that the parties had been duly served with the application and the notice of set down; and

14.2. the second Respondent had not made out a case for the hearing into the matter to be further postponed.

15. The Tribunal is satisfied that the requirements for the hearing to be held on a default basis have been fulfilled. The matter accordingly proceeded on a default basis.

16. With regard to the allegations in the application or referral papers before the Tribunal, Rule 13(5) bears reference. It provides as follows -

“Any fact or allegation in the application or referral not specifically denied or admitted in the answering affidavit, will be deemed to have been admitted”

17. Therefore, in the absence of any answering affidavit filed by the Respondents, the Applicant’s application and all the allegations contained therein are deemed to be admitted.

Relevant provisions of the CPA

18. A consumer has the right to demand quality service in terms of section 54 of the CPA. Section 54 provides as follows –

“(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 a 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 the services; and*
 - (d) *the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services,*
having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services. "
- (EMPHASIS ADDED)

DISCUSSION

19. The Applicant appeared at the hearing and gave evidence under oath in support of her application.
20. She averred that –
 - 20.1. She approached the first Respondent to do certain renovations at her home. When she received the first Respondents quotation, she declined the quotation as it was for a higher amount than she could afford;
 - 20.2. An employee of the first Respondent referred her to the second Respondent. The Applicant entered into negotiations with the second Respondent. They subsequently agreed on the work to be done and the price for it;
 - 20.3. She and the second Respondent agreed that the second Respondent would supply and fit high gloss cabinetry in the Applicant's kitchen, bedroom and lounge; do tiling in the bathroom, lounge and kitchen; do some electricity and plumbing work and some minor works;

- 20.4. She made payments to the second Respondent totalling R 90 000.00 between February 2016 and March 2016. The work was supposed to be completed by the Easter holidays in 2016;
- 20.5. She provided some of the material. She gave the money for the high gloss material for the cabinets to the second Respondent to have it manufactured and supplied;
- 20.6. The second Respondent commenced with the renovations but never completed it. The work was still not completed at the date of the hearing;
- 20.7. The workmanship was really poor, for example some of the cabinets could not open, drawers were installed without runners, cabinet doors were too big for the cabinets and could not be fitted. They were left lying on the floor. Furthermore, sheets pasted onto cabinets were peeling off; floating shelves were left on the floor. Taps were left leaking into cabinets causing damage to them and to neighbouring units. An electrical installation caused an electrical fire;
- 20.8. The high gloss material for the cabinets she had ordered and paid for was not supplied. Instead the second Respondent bought boards and spray-painted them at her home to imitate the high gloss material she wanted;
- 20.9. Due to the leaks caused by the plumbing work the second Respondent did and the fire damage caused by the electricity installation, she had to appoint other service providers and pay them to fix those. Where the second Respondent spray-painted the boards: she had to repaint the exterior walls of her balcony upon insistence by the body corporate; and.
- 20.10. She requested the second Respondent on numerous occasions to resolve the problems and finish the work. Despite these entreaties the second Respondent has to date failed to fix the poor workmanship. In addition, he has failed to

provide material of the quality agreed on and finish the renovations to complete the work.

21. The Applicant placed a number of photographs before the Tribunal as evidence of the second Respondent's failure to provide quality materials and the poor workmanship and the damage it caused.
22. From studying these photographs and assessing the Applicant's evidence, it is clear to the Tribunal that the second Respondent failed to meet his obligations in terms of section 54(1)(a) – (d); and furthermore failed to remedy the defects in terms of section 54(2)(a).

REFUND

23. The Applicant wants the second Respondent to refund the money she paid to him in full. She also wants to be refunded the money she had to spend fixing the damages caused by the poor quality of the second Respondent's electrical and plumbing work and to repaint her balcony.
24. Section 54(2) of the CPA provides as follows -
“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.”*
25. It appears from the uncontested evidence that the second Respondent never remedied the defects in the quality of the work done and the goods supplied.

26. The Applicant's anxiety and frustration to have to live in her home with all the problems the second Respondent left her with for almost three years, is palpable, plain to see and understandable.
27. Due to the extent of the poor workmanship and the poor quality of material the second Respondent supplied, and the damages he caused in the process of doing the work, it seems to the Tribunal that there is very little of what the second Respondent did that is of use to the Applicant.
28. The Applicant did not put any evidence forward to quantify the payments she made to other service providers for the repairs of the damages caused by the plumbing leak, electric fire and spray-painting done on the balcony.

CONCLUSION

29. Having had regard to all the issues raised in this matter the Tribunal finds, on a balance of probabilities, that the second Respondent contravened section 54(1)(a) to (d); and failed to remedy the defects in terms of section 54(2)(a).
30. Though the Applicant initially approached the first Respondent to do the renovations for her, it is clear that she contracted and dealt with only the second Respondent.
31. The Applicant did not make out a case for joint and several liability of the first Respondent with the second Respondent.
32. The Tribunal is of the view that the second Respondent should refund the Applicant the R 90 000,00 she paid to him.
33. The Tribunal further finds that the Applicant did not, on a balance of probabilities, prove the quantum and payment for the repairs set out in paragraph 28 above.

ORDER

34. Accordingly, the Tribunal makes the following order –

- 34.1. The application to order the second Respondent to refund the Applicant the full purchase price of R 90 000,00 paid by the Applicant to the second Respondent is granted;
- 34.2. The second Respondent is ordered to refund the Applicant the full sum in the amount of R90 000,00 within 30 business days of the date of this order; and
- 34.3. There is no order made as to costs.

THUS DONE AND SIGNED AT CENTURION ON THIS 18TH DAY OF APRIL 2019.

[duly signed]

Ms D Terblanche
Tribunal member

Dr. M Peenze, Tribunal member and Mr A Potwana, Tribunal member. concurring.

Authorised for issue by National Consumer Tribunal

Case Number: NCI/116213/2018/75(1)(b)

Date: 2019 / 04 / 29
CCYY / MM / DD

National Consumer Tribunal
Ground Floor, Building B
Lakefield Office Park
272 West Avenue, Centurion, 0157
www.thenct.co.za

