

**IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION**

Case Number: **NCT/315258/2024/75(1)(b)**

In the matter between:

NICOLETTE MARJON VADERS

APPLICANT

AND

SAMSUNG ELECTRONICS SA (PTY) LTD

RESPONDENT

Coram:

Dr M Peenze - Presiding Tribunal Member

Dr A Potwana - Tribunal Member

Ms P Manzi-Ntshingila - Tribunal Member

Date of Hearing - 18 October 2024

Date of Judgment - 19 October 2024

JUDGMENT AND REASONS

1. The applicant in this matter is Nicolette Marjon Vaders, a consumer as defined in section 1 of the Consumer Protection Act, 2008 (the CPA). The consumer represented herself at the hearing, supported by Mr Bus van Kampfen.
2. The respondent is Samsung Electronics SA (Pty) Ltd, a private company duly incorporated under the company laws of South Africa and a supplier as defined in section 1. Adv Zanele Nganje, on instruction by Cliffe Dekker Hofmeyr Incorporated, appeared on behalf of the respondent.

TERMINOLOGY

3. A reference to a section in this judgment refers to a section of the CPA.
4. A reference to a rule refers to the “Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal”.¹

TYPE OF APPLICATION

5. The applicant referred this matter to the National Consumer Tribunal (the Tribunal) in terms of section 75(1)(b). The applicant first referred her complaint to the National Consumer Commission (the NCC), who, after an assessment, concluded on 25 October 2023 that the redress sought by the applicant could not be provided in terms of the CPA.
6. Regarding sections 75(1)(b), if the NCC issued a notice of non-referral as it did in the present matter, the complainant may refer the matter directly to the Tribunal, with leave of the Tribunal. The Tribunal granted such leave on 28 August 2024.

FACTUAL BACKGROUND

7. The applicant alleges the selling of a defective refrigerator-freezer combo (the freezer combo) on 19 August 2022. The applicant expected the freezer combo to maintain freezer temperatures for reasonable periods during power outages. The applicant relies on a sticker affixed inside the fridge wall, indicating “Temperature rise: 7h.” The applicant interprets this sticker as indicative that no significant temperature rise is expected within 7 hours and that a sustained performance of up to 7 hours without power is guaranteed.
8. According to the applicant, the freezer temperature rises unacceptably fast during power outages. The temperature levels allegedly fluctuate from -22 degrees Celsius to +6 degrees Celsius in two hours. This leads to ice crystals

¹ Published in GN 789 in GG 34405 of 29 June 2007.

forming on food, resulting in food defrosting after two hours despite closed doors.

9. The respondent inspected the freezer combo twice and found it functioning correctly. Consequently, it disputes the malfunctioning of the goods.
10. On 12 October 2022, the applicant requested a replacement fridge. The respondent refused.
11. The applicant requests an order directing the respondent to replace the freezer combo or refund her the purchase price of R27 899.00.

FACTUAL AND LEGAL DISPUTES

12. The defective state of the freezer combo is disputed.
13. The applicant obtained a technical report from a specialist, Louis Venter of Venco-Tech (Mr Venter), outlining the fluctuation of temperatures. Mr Venter believes the freezer combo's rubbers may not be sealing properly. The respondent disputes the reliability of this report.
14. The respondent filed an answering affidavit of Mr Paul Cairns Croll, the Service: Head of Department of the respondent. The essence of the respondent's opposition is that the freezer combo had no mechanical defects, and the applicant has not made a case as required in terms of section 56. The respondent argues that Mr Venter did not conduct a technical or physical test but made observations and conclusions based on information provided by the applicant. The respondent relies on its own assessment of the freezer combo conducted in April 2023, when three cooling diagnosis tests were performed, and no internal or physical faults were detected. The respondent submits that the product is not mechanically defective as alleged.
15. The disputes are twofold:
 - (i) Whether the freezer combo performs per its specifications and guarantees; and

- (ii) Whether the fluctuation in temperature during power outages constitutes a defect;

THE RELEVANT LEGAL PROVISIONS

16. In terms of section 55(2), every consumer has a right to receive goods 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 usable and durable for a reasonable period, having regard to the use to which they would generally be put and all the surrounding circumstances of the supply; and (d) comply with any applicable standards set under the Standards Act 29 of 1993, or any other public regulation.
17. Section 56 deals with an implied warranty of quality. Subsection (2) states that within six months after delivery of any goods to a consumer, the consumer may return the goods to the supplier without penalty and at the supplier's risk and expense if the goods fail to satisfy the requirements and standards contemplated in section 55. The supplier must then, at the election of the consumer, either repair or replace the failed, unsafe, or defective goods or refund the consumer the price paid by the consumer for the goods.
18. If a supplier repairs any goods or any component of any such goods and the failure, defect, or unsafe feature has not been remedied within three months after that repair, section 56(3) outlines that the supplier must replace the goods or refund the consumer the price paid by the consumer for the goods.

CONSIDERATION OF PROHIBITED CONDUCT

19. The Tribunal has considered whether the respondent's conduct constitutes prohibited conduct² in terms of the CPA. In doing so, the Tribunal is mindful of its wide-ranging powers to make appropriate orders concerning prohibited conduct.³

² Prohibited conduct is defined in section 1 as meaning an act or omission in contravention of the CPA.

³ See *National Credit Regulator v Dacqup Finances CC trading as ABC Financial Services – Pinetown and Another* (382/2021) [2022] ZACSA 104 (24 June 2022).

20. In the present matter, the applicant argued that the respondent contravened section 55(2), read with section 56.
21. According to the evidence before the Tribunal, the applicant interpreted the specifications referring to “Temperature Rise: 7h” as indicative that no significant temperature rise is expected within 7 hours and that a sustained performance of up to 7 hours without power is guaranteed. The applicant alleges that the sticker misled her. The Tribunal considered the sticker to be read with the User Manual, supplied to consumers in hard copy with delivery and online. Per the User Manual, the freezer combo would need 7 hours to reach freezing temperatures if empty and 24 hours if full. Further, the Manual advises consumers to ensure the freezer combo is connected to power. The manual details the volts required for the proper use of the product.
22. The Tribunal finds that the sticker referring to “Temperature Rise: 7h” and the specifications contained in the manual do not support an interpretation that the freezer combo could be reasonably expected to retain the same freezing temperature for up to two hours despite no power. The Tribunal finds that the manual details the opposite: the product must be connected to power. It further provides troubleshooting advice to consumers to outline precautions to take in the event of any power outage and the timeline within which it could be expected that freezing temperatures are restored.
23. It is not in dispute that the freezer combo functioned without problem when connected to power. This was evidenced by the inspection reports tabled by the respondent, confirming that a Hass application was used, and the product was confirmed to be in good working condition. The applicant also testified that she had used the freezer combo without problem during regular periods without load shedding for the last two years. Accordingly, the Tribunal finds that the freezer combo performed per its specifications.
24. The Tribunal further considered whether the fluctuation in temperature during load-shedding constitutes a defect. Although a fluctuation in temperature during load-shedding is not disputed, the applicant alleges that the fluctuation in her freezer combo is dramatically high and unacceptable. During her testimony, the

applicant confirmed that she did not open the freezer combo during load shedding but that the temperatures increased dramatically despite the closed doors. The Tribunal accepts the consumer's version that the doors were not opened unduly.

25. According to Mr Venter's findings, the freezer combo's temperature rises nearly 20 degrees within 2 hours without electrical power. The Tribunal accepts Mr Venter's confirmation of the sensor's readings. However, the Tribunal does not accept the reliability of such readings or Mr Venter's conclusions. During the hearing, Mr Benjamin van Zyl (Mr van Zyl), an expert witness called by the Respondent, explained the reasons for a rapid increase in temperature during load-shedding and how sensor readings should be interpreted. The Tribunal accepts Mr van Zyl's testimony. According to him, various factors may contribute to an increase in the combo freezer's temperature during load shedding, such as the state of defrosting before load shedding, the cycle setting and whether doors were opened. Mr van Zyl further explained that the temperature sensors require air circulation to be reliable. As air circulation cannot occur without power, sensor readings immediately after power restoration may reflect incorrect readings. At that point, sensors must still be stabilised. An air supply is needed to enable a stable temperature reading, for which power is required.
26. The applicant did not provide details of the circumstances that prevailed when she took the sensor readings, apart from confirming that the doors were not opened. Further, the applicant's photos portray temperature readings taken during load-shedding or immediately following power restoration. Based on Mr van Zyl's testimony, the Tribunal does not accept the applicant's readings as reliable.
27. Consequently, the Tribunal finds that a fluctuation in temperature during load shedding does not per se constitute a defect. Further, the respondent did not sell or purport to sell a freezer combo that would have no or minimal temperature fluctuation unconditionally during load shedding.

28. On the evidence before the Tribunal, the applicant failed to persuade the Tribunal that a radical fluctuation in temperature occurred or that all the conditions to minimise fluctuation were met.

CONCLUSION

29. The Tribunal finds that the freezer combo was advertised and sold as a product generally used with power. Therefore, the product's ordinary use is to maintain temperature with power. The maintenance of freezing temperatures is also conditional to various circumstances, and consumers must take the required precautions. Similarly, the state of the freezer combo and a consumer's chosen settings impact the fluctuation in temperature during power outages. The applicant could not persuade the Tribunal that all precautionary conditions had been met, that the sensor readings were reliable or that the fluctuation in temperature was radical.
30. The applicant was able to use the combo fridge when connected to power for the last two years. Therefore, the Tribunal finds the product useable and durable for a reasonable period.

ORDER

31. In the result, the Tribunal makes the following order:
- 31.1. The application is dismissed; and
- 31.2. There is no cost order.

DR. MC PEENZE
PRESIDING MEMBER

Tribunal members Ms N Maseti and Ms Manzi-Ntshingila concur.

Authorised for issue by The National Consumer Tribunal

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