

IN THE KWAZULU NATAL CONSUMER TRIBUNAL HELD IN DURBAN

Case Number: KZNCT01/2025

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

MOGANDHRIN GOVENDER

SECOND PLAINTIFF

(Name of the Consumer)

and

LUSANDA ULWAZI (PTY) LTD

FIRST DEFENDANT

T. MUFUDZA

SECOND DEFENDANT

Coram:

Prof B. Dumisa	–	Chairperson & Presiding Member
Ms A Sewpersad	–	Member & Alternate Deputy Chairperson
Mr S Mbhele	–	Member
Date of Hearing	–	10 April 2025
Date of Judgment	–	07 May 2025

JUDGEMENT AND REASONS

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 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 Plaintiffs Investigation Report was deposed to by Ms Sizophila Ngobese, who is presently employed within EDTEA at KwaDukuza District Office, where she is also appointed as an Investigator by the First Plaintiff.

SECOND PLAINTIFF

5. The Consumer, who is the Second Plaintiff in this matter is **MORGANDHRIN GOVENDER**, a major male, who resides in Palm Lakes, KwaDukuza, 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 Respondent on the 1st October 2024.
7. At the hearing, the Second Plaintiff represented himself.

DEFENDANT

8. The Defendant is **LUSANDA ULWAZI (PTY) LTD, (Reg. no: 2015/054335/07)**, with its principal place of business situated at 6 Wadley Road, Glenwood, Durban, which address it has chosen as its domicilium citandi et executandi (hereinafter referred to as “the Defendant”).
9. **MR T MUFUDZA** who is the presumed owner of the business Lusanda Ulwazi (PTY) LTD, the First Defendant, will automatically be joined as the Second Defendant, primarily because the payments made to the Defendant(s) were made directly to the private personal account of T Mufudza; though one Mr Lloyd Masaraure later also claimed to be the owner of this business, and yet the same person had earlier introduced himself merely as a representative of the First Defendant when he went to the Second Plaintiff's property for measurements.

APPLICATION TYPE AND ORDER SOUGHT

10. This KZN Consumer Tribunal (hereinafter referred to as “the Tribunal”) derives the jurisdiction for hearing this matter under Section 21 of the KwaZulu-Natal Consumer Protection Act, 4 of 2013 (the KZNCPA). This matter is in terms of Section 4 and Section 19, of the Consumer Protection Act No 68 of 2008 (the CPA).
11. The Second Plaintiff sought an order against the Defendant(s) in the following manner:
 - 11.1 Declaring that the Defendant(s) conduct is prohibited conduct, in contravention of Section 4 and Section 19 of the Consumer Protection Act 68 of 2008 (the “CPA”);
 - 11.2 Directing the Defendant(s) to refund the Second Plaintiff owing an amount of R10 700.00 (Ten Thousand Seven Hundred Rand);
 - 11.3 Interest on the amount referred to in 11.2 above at the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975;
 - 11.4 The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled;
 - 11.5 To order the Defendants to pay all the above payments within 15 days of the judgment to the Second Plaintiff Bank Account;
 - 11.6 Directing the Defendants to refrain from conducting future business in a manner that amounts to prohibited conduct;
 - 11.7 Directing the Defendants to pay an administrative penalty and / or making any other appropriate order contemplated under Section 4(2)(b)(ii) of the CPA.
 - 11.8 Any further and/or alternate relief.

MATTERS TO BE DECIDED

12. The Tribunal has to decide whether:
 - 12.1 The Respondent breached the provisions of the Act as alleged; and
 - 12.2 The appropriate sanction to be ordered.

BACKGROUND

13. The Second Plaintiff gave the following details when he lodged his complaint against the Defendants with the First Plaintiff.
 - 13.1 On or about February 2024, the Second Plaintiff contacted the Defendant(s) to provide the manufacturing and installation of stainless-steel balustrades for the Second Plaintiffs residence;
 - 13.2 On the 9th of February 2024, the Defendants provided the quotation of R55050.00 (Fifty-Five thousand and Fifty Rand) to the Second Plaintiff. The Defendants advised that an immediate part payment of R30000.00 (Thirty Thousand Rand) was required and thereafter the balance would be paid on completion of the work;
 - 13.3 On the 26th of April 2024 the Second Plaintiff paid an amount of R30000 (Thirty Thousand Rand) into the Second Defendant's, T Mufudza, personal bank account, which was in full compliance with their terms of agreement;
 - 13.4 Prior to the payment of the deposit, the Defendants' representative, Lloyd arrived at the Second Plaintiff's house to take measurements. The commencement of the Second Plaintiff's building was in progress; hence the Second Plaintiff and the Defendants agreed that the balustrades would only be installed when the building was completed.
 - 13.5 At around July 2024, the Second Plaintiff telephonically contacted the Defendants; where the parties agreed that the work would be done and completed by the 31st of July 2024. This was not done.

- 13.6 After giving some excuses for not delivering by the 31st of July 2024, the Defendants made another undertaking that they would install the balustrades by the 15th of August 2024. This was again not done. The excuses and promises went on and on.
- 13.7 On the 1st of October 2024, the Second Plaintiff formally lodged a complaint against the Defendants with the KwaZulu-Natal Consumer Protector's Office. Ms Sizophila Ngobese was officially designated the Investigator on this matter.

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT

14. The investigator tried to mediate this matter, where the Defendants did accept that they owe the Second Plaintiff R30000.00, which they offered to pay in three instalments; yet refused to sign the settlement agreement. The Defendants made two payments directly to the Second Plaintiff's bank account; but however, failed to make the third payment.
15. It is against this background that the Second Plaintiff requested that the matter be referred to the KZN Consumer Tribunal as he believed the Defendants' conduct was tantamount to prohibited conduct.
16. In her sworn affidavit, the investigator, Ms Sizophila Ngobese, concluded the *"It became apparent to me that the Defendant was unwilling to resolve this complaint any further. This has frustrated the Second Plaintiff and therefore he requested that the complaint was best referred to the consumer tribunal"*

THE HEARING

17. The hearing was held on the 10th of April 2025
- 17.1 The Hearing was held at the EDTEA Offices of the KwaZulu-Natal Department of Economic Development Tourism and Environmental Affairs (EDTEA), 24th Floor, 333 Bayhouse Building, Anton Lembede Street, Durban.
- 17.2 The Defendants had not formally indicated their intention to defend the matter, and did not attend. The matter was thus held unopposed.

- 17.3 At the Hearing, the First Plaintiff and the Second Plaintiff confirmed the details of the complaint as contained under Background above;

APPLICABLE SECTIONS OF THE CONSUMER PROTECTION ACT 68 of 2008

18. Section 4

Realisation of consumer rights

“(1) ...

(2) ...

(3)

(4) ...

(5) In any dealings with a consumer in the ordinary course of business, a person must not –

- (a) engage on any conduct contrary to or calculated to frustrate or defeat the purposes and policy of this Act.*

19. Section 19

Consumer’s rights with respect to delivery of goods or supply of service

(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 the delivery of goods; or

(b) the agreed place of delivery of goods or performance of services is the supplier’s place of business, if the supplier has one, and if not, the supplier’s residence; and

(c) goods to be delivered remain at the supplier’s risk until the consumer has accepted delivery of them, in accordance with this section

CONSIDERATION OF THE EVIDENCE BEFORE THE TRIBUNAL

20. It is not in dispute that the Defendants did not supply and install the balustrades as per the terms and agreement:
 - 20.1 The Defendants made many promises to deliver and install balustrades on certain dates, but failed to deliver on each of those dates;
 - 20.2 They promised to refund the Second Plaintiff but failed to refund the Second Plaintiff all the money owing as promised; they just refunded some money, and not the full amount.

CONSIDERATION OF THE ORDERS APPLIED FOR

21. There was a prayer for the Defendants conduct to be declared prohibited conduct in contravention of various provisions of the CPA.
 - 21.1 The Defendant's conduct was in breach of Section 4(5)(a) of the CPA, when they totally failed to deliver and install the balustrades as per terms and agreements;
 - 21.2 The Defendants were in breach of Section 19(2) when they failed to deliver and install the balustrades;
22. The First Plaintiff made a prayer for the Defendants to refund the Second Plaintiff the amount of R10 700.00 being the total amount still owing by the Defendants to the Second Plaintiff;
23. Directing the Defendants to pay an interest on the amount referred to in paragraph 22 at the Prime Overdraft Rate of 11.5%;
24. The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled;
25. Directing the Defendants to pay an administrative penalty of R15 000.00 (Fifteen Thousand Rand) and/or making any other appropriate order contemplated under section 4(2)(b)(ii) of the CPA.

ORDER

26. Accordingly, the Tribunal makes the following order:
27. The Defendants are declared to have engaged in prohibited conduct in contravening Section 4(5)(a), and Section 19(2) of the Consumer Protection Act No 68 of 2008;
28. The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled;
29. The Defendants, both Lusanda Ulwazi (Pty) Ltd and T Mufudza, are jointly and severally liable, the one paying the other to be absolved and are ordered to refund the Second Plaintiff the amount of R10 700.00 (Ten Thousand Seven Hundred Rand) which is the amount still owing to the Second Plaintiff by the Defendants;
30. Interest be paid on the amount referred to in paragraph 29 above at the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975;
31. The Defendants are ordered to pay the sum of the amounts on paragraphs 29 and 30 to the Second Plaintiff's banking account as per details below:

BANK NAME : Standard Bank
ACCOUNT NAME : Mr Morgandhrin Govender
ACCOUNT TYPE : Current
ACCOUNT NUMBER : 252422147
BRANCH NUMBER/ NAME: KwaDukuza Mall
BRANCH CODE : 007529

Reference: KZNCT01/2025 and name of the Person or Business Making the Payment

32. The Defendants are ordered to pay an administrative penalty of R15 000.00 (Fifteen Thousand Rand) 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 : CHEQUE ACCOUNT

ACCOUNT NUMBER : 40 7248 4412

BRANCH NAME : ABSA BUSINESS CENTRE

BRANCH CODE : 630495

Reference : KZNCT01/2025 and Name of Person or Business making payment

33. The total amount is payable within 15 (Fifteen) days of the date of this judgment.

34. There is no order as to costs.

DATED ON THIS 07 DAY OF MAY 2025

Prof B. Dumisa
Chairperson

Ms. A. Sewpersad (Member and Alternate Deputy Chairperson) and Mr. S. Mbhele (Member) concurred