

**IN THE KWAZULU NATAL CONSUMER TRIBUNAL HELD IN
DURBAN**

Case Number: KZNCT12/2025

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

DUMISANE SUNSHINE MAKHATHINI

SECOND PLAINTIFF

(Name of the Consumer)

and

ZUKULA COLD ROOMS CC t/a Wosiyane Cold Rooms

FIRST DEFENDANT

(CK 9912767/23)

MATHEWS BONGANI CHEMANE

SECOND DEFENDANT

Coram:

Prof B. Dumisa – **Chairperson & Presiding Member**

Ms A. Sewperad – **Member & Alternate Deputy Chairperson**

Mr S Mbhele – **Member**

Date of Hearing – **09 September 2025**

Date of Judgment – **06 October 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 Mrs Thandeka Makhathini, who is presently employed as an Assistant Director within EDTEA in the Ladysmith 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 **DUMISANE SUNSHINE MAKHATHINI**, a major male, who resides at the Matiwane Area, Ladysmith, 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 Defendant on the 10th July 2025.
7. At the hearing, the Second Plaintiff represented himself.

DEFENDANT(S)

8. The Defendant is **ZUKULA COLD ROOMS t/a Wosiyane Cold Rooms (Reg. no: CK9912767/23)**, with its principal place of business situated at 98 Abbot Francis, Mariannhill, Pinetown, Durban, which address it has chosen as its domicilium citandi et executandi (hereinafter referred to as “the Defendant”).
9. **MR MATHEWS BONGANI CHEMANE** who said he is the owner of the Wosiyane Cold Rooms CC, the First Defendant, will automatically be joined as the Second Defendant.

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 R49 000.00 (Forty Nine Thousand 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 27th of March 2025, the Second Plaintiff contacted the Defendant(s) to supply and deliver the cold-room mobile fridge to the Second Plaintiff;
 - 13.2 The Defendants provided the quotation of R49 000.00 (Forty thousand Rand) to the Second Plaintiff. The Second Plaintiff immediately paid that R49000 in full that same day into the Defendant's **ABSA Bank Account (Acc No. 4101783438)**.
 - 13.3 No receipt was issued by the Defendant; though the Second Plaintiff did receive confirmation that the money had been received and the consumer was re-assured that arrangements would be made to deliver the cold room within one month.

- 13.4 The Second Plaintiff made several enquiries as to when they would deliver but they kept on making empty promises. Since this was the second time for the Second Plaintiff to buy from the Defendant, he did not immediately become suspicious of their behaviour and just suspected that the Defendant had many orders to attend to.
- 13.5 The Second Plaintiff contacted the Defendant several times in April 2025 as his business was now suffering and they indicated that they would deliver mobile fridge cold rooms; advising the Second Plaintiff to give them time. After being patient with them for a long time he realized he was not get his mobile cold room; he requested that they refund him the R49 000.00 he had paid them.
- 13.6 To-date, the Defendants have failed to deliver the mobile cold-room nor refund his money.
- 13.7 It is against this background that the Second Plaintiff finally decided to formally lodge a complaint with the Office of the KwaZulu-Natal Consumer Protector on the 10th of July 2025. Ms Thandeka Makhathini 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. She wrote: *"I have made several telephone calls including WhatsApp messages but whenever I contact Wosiyane they promise to respond but they fail. I have realized they are not willing to entertain this complaint since they are now ignoring my calls and are failing to respond to my WhatsApp messages"*.
15. The Defendants are repeat offenders. Earlier this year, on 24 April 2025, this KwaZulu-Natal Consumer Tribunal heard another matter KZNCT03/2025 Dr Lindokuhle Sangweni v Wosiyane Cold Rooms, involving the very same Defendants. The circumstances and facts involved in that case are almost the same as those involved in this case KZNCT12/2025 Dumisane Sunshine Makhathini v Zukula Cold Rooms t/a Wosiyane Cold Rooms. Now, dealing with this present case involving Dumisane Sunshine Makhathini, we are *"now picking a trend that the defendants are an unscrupulous business which is scamming vulnerable consumers"*. It is precisely for this reason that the Defendants should be listed on the KwaZulu-Natal Consumer Protector's Register of Adverse Notations.

16. 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.
17. In her report, the investigator, Mrs Thandeka Makhathini, concluded that the Defendants failed to comply with the Consumer Protection Act as they failed to deliver the cold-room within the agreed time frames.

THE HEARING

18. The hearing was held on the 9th of September 2025
- 18.1 The Hearing was held at the EDTEA Offices of the KwaZulu-Natal Department of Economic Development Tourism and Environmental Affairs (EDTEA), the MARINE BUILDING, 1st Floor Boardroom, 22 Dorothy Nyembe Street, Durban.
- 18.2 The Defendants had not formally indicated their intention to defend the matter and did not attend. The matter was thus held unopposed, on a default basis.
- 18.3 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

19. **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.*
20. **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

21. It is not in dispute that the Defendants did not supply and deliver the cold-room as per the terms and agreement:
- 21.1 The Defendants made many promises to supply and deliver the cold-room on certain dates, but failed to deliver on each of those dates;
 - 21.2 They promised to refund the Second Plaintiff but failed to refund the Second Plaintiff all the money owing as promised.

CONSIDERATION OF THE ORDERS APPLIED FOR

22. There was a prayer for the Defendants conduct to be declared prohibited conduct in contravention of various provisions of the CPA.
- 22.1 The Defendant's conduct was in breach of Section 4(5)(a) of the CPA, when they totally failed to supply and deliver the cold-room as per terms of the sales agreement;
 - 22.2 The Defendants were in breach of Section 19(2) when they failed to refund the Second Plaintiff the R49 000.00 already paid in full for the cold-room.

23. Directing the Defendant to refrain from conducting future business in a manner that amounts to prohibited conduct.
24. The First Plaintiff made a prayer for the Defendants to refund the Second Plaintiff the amount of R49 000.00 (Forty-Nine thousand Rand) being the total amount owing by the Defendants to the Second Plaintiff;
25. Directing the Defendants to pay an interest on the amount referred to in paragraph 22 at the Prime Overdraft Rate of 10.5%;
26. The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled;
27. 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.
28. The Defendant details be listed on the Consumer Protectors register of adverse notations.
29. Further and alternative relief.

ORDER

30. Accordingly, the Tribunal makes the following order:
31. 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;
32. The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled;
33. The Defendants, both Zukula Cold Rooms t/a Wosiyane Cold Rooms CC and Matthews Bongani Chemane, are jointly and severally liable, the one paying the other to be absolved and are ordered to

refund the Second Plaintiff the amount of R49 000.00 (Forty-Nine Thousand Rand) which is the amount owing to the Second Plaintiff by the Defendants for the total amount already prayed upfront for the cold-room;

34. Interest be paid on the amount referred to in paragraph 33 above at the Primer Overdraft Rate of 10.5%;
35. The Defendants are ordered to pay the sum of the amounts on paragraphs 33 and 34 to the Second Plaintiff's banking account as per details below:

BANK NAME : ABSA
ACCOUNT NAME : DUMISANE SUNSHINE MAKHATHINI
ACCOUNT TYPE : SAVINGS
ACCOUNT NUMBER : 9256043193
BRANCH CODE : 632005

Reference: KZNCT12/2025 and name of the Person or Business Making the Payment

36. The Defendants are ordered to pay an administrative penalty of R40 000.00 (Forty 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 : KZNCT12/2025 and Name of Person or Business making payment

37. The total amount is payable within 30 (Thirty) days of the date of this judgment.
38. The Defendants' details must be added/ listed on the KwaZulu-Natal Consumer Protector's Register of Adverse Notations.

39. There is no order as to costs.

DATED ON THIS 6th DAY OF OCTOBER 2025

Prof B. Dumisa
Chairperson

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