

IN THE KWAZULU NATAL CONSUMER TRIBUNAL

HELD VIRTUALLY

Case Number: KZNCT14/2025

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

KHANYISILE NAMAPHANGA MASEKO

SECOND PLAINTIFF

(Name of the Consumer)

and

ATLAS CIVIL ENGINEERING (PTY) LTD

DEFENDANT

(Business Registration Number: K2022763788)

Coram:

Dr B. Dumisa – Chairperson & Presiding Member

Ms N. Cawe – Member & Deputy Chairperson

Mr S Mbhele – Member

Date of Hearing – 27 January 2026

Date of Judgment – 07 February 2026

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 Adv 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 Ntumiseng Nketlana, 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 **KHANYISILE NAMAPHANGA MASEKO**, a major female, who resides in Newcastle, in the Province of KwaZulu-Natal (hereinafter referred to as “the Second Plaintiff” or “the Consumer”).
6. The Second Plaintiff lodged her complaint against the Defendant on the 17th of November 2025.
7. At the hearing, the Second Plaintiff represented herself.

DEFENDANT(S)

8. The Defendant is **ATLAS CIVILS ENGINEERING (Pty) Ltd, (Business Registration Number: K2022763788)**, with its principal place of business situated at 30 Cable Street, Avon Industrial Area,

Dundee, in the Province of KwaZulu-Natal, which address it has chosen as its domicilium citandi et executandi (hereinafter referred to as “the Defendant”).

APPLICATION TYPE AND ORDER SOUGHT

9. 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).
10. The Second Plaintiff sought an order against the Defendant(s) in the following manner:
 - 10.1 Declaring that the Defendant(s) conduct is prohibited conduct, in contravention of Section 4 and Section 19 and Section 47 of the Consumer Protection Act 68 of 2008 (the “CPA”);
 - 10.2 Directing the Defendant(s) to refund the Second Plaintiff owing an amount of R41 000.00 (Forty-One Thousand Rand);
 - 10.3 Interest on the amount referred to in 10.2 above at the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975;
 - 10.4 The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled;
 - 10.5 To order the Defendants to pay all the above payments within 15 days of the judgment to the Second Plaintiff Bank Account;
 - 10.6 Directing the Defendants to refrain from conducting future business in a manner that amounts to prohibited conduct;
 - 10.7 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.

10.8 Any further and/or alternate relief.

MATTERS TO BE DECIDED

11. The Tribunal has to decide whether:

11.1 The Respondent breached the provisions of the Act as alleged; and

11.2 The appropriate sanction to be ordered.

BACKGROUND

12. The Second Plaintiff gave the following details when she lodged her complaint against the Defendants with the First Plaintiff.

12.1 On or about 18 June 2025, the Second Plaintiff contacted the Defendant to supply and deliver the container to the Second Plaintiff's business premises Owethu Sbu Trading (Pty) Ltd, located at 64 Paterson Street, Newcastle Central Business District;

12.2 The Defendants provided the quotation of R41 000.00 (Forty-one thousand Rand) to the Second Plaintiff. The Second Plaintiff immediately paid that R41 000 the same day in full by electronic payment into the Defendant's designated Standard Bank Account whilst at the business premises;

12.3 The Defendant acknowledged the Second Plaintiff's payment and assured the latter that delivery of the container will be made within two weeks, as evidenced by the Proof of Payment and Proforma invoice;

12.4 The Defendant failed to honour the sale agreement, as they failed to deliver the container as promised;

12.5 It took the Second Plaintiff at least six full months, from June 2025 to December 2025, to regularly contact the Defendant; and was simply ignored and/or simply sent on a run-around by the Defendant.

- 12.6 The Second Plaintiff finally decided to officially lodge a formal complaint against the Defendants with the KwaZulu-Natal Consumer Protector's Office. Ms Ntumiseng Nketlana was officially designated the Investigator on this matter.

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT

13. The investigator tried to mediate this matter, including visiting the Defendant's business premises with the Second Plaintiff and another EDTEA staff-member on the 22nd of October 2025. During this particular visit, the Defendant made yet another unfulfilled promise to deliver the container on the 31st of October 2025.
14. Due to all these unfulfilled promises by the Defendant, the Second Plaintiff came to the conclusion that *"the Defendant business is untrustworthy and has engaged in prohibited conduct,"*
15. In her report, Ms Ntumiseng Nketlana, concluded *"The Second Plaintiff strongly believes that her claim would be best resolvable through the Consumer Tribunal and cannot be resolved through Alternative Dispute Resolute (ADR) means as the Defendant is untrustworthy and that any further resolution proposed by the Defendant will not be fulfilled as they were given ample time to honour their previous arrangements"*.

THE HEARING

16. Summons were issued to parties on the 20th of Day of November 2025.
- 16.1 The Hearing was to be held at the EDTEA Offices of the KwaZulu-Natal Department of Economic Development Tourism and Environmental Affairs (EDTEA), on the Second Floor Boardroom, 50 Harding Street (Previously Nedbank Building), Newcastle, on the 27th Day of January 2026, at 9AM.
- 16.2 The Defendants had not formally indicated their intention to defend the matter. The matter was thus to be held unopposed.
- 16.3 On the 23rd of December 2025, tired of being disrespectfully treated with contempt by the Defendant, the Second Plaintiff and her brother decided to go and stage a "sit-in" at the gates of the Defendant's

business premises at 30 Cable Street, Avon Industrial Area, Dundee. This was the Second Plaintiff's desperate cry for help; yet she continued to be ignored for at least five hours. It was only after five hours of a "sit-in" at those Defendant's business gates that the Defendant finally decided to give the Second Plaintiff the container she had paid for six months earlier on the 18th of June 2025.

- 16.4 The Second Plaintiff concedes that the Defendant did offer their own tow-truck for the delivery of the container; the Second Plaintiff still contends that such delivery is still not in line with the sales agreement terms as concluded on 18 June 2025.
- 16.5 Unfortunately, unbeknown to the First Plaintiff, a false impression was created that the Defendant had finally "supplied and delivered the container" to the Second Plaintiff. Hence, on the date of Hearing on Tuesday 27 January 2026, the First Plaintiff indicated that they intended to apply for the matter to be removed from the roll.
- 16.6 It was at that Hearing, on Tuesday 27 January 2026, that the Second Plaintiff fully clarified the circumstances under which she finally got for container after a five hour "sit-in" at the Defendant's business premises gates.
- 16.7 The KwaZulu-Natal Consumer Tribunal formally decided not to grant the application for this matter to be removed from the roll. This judgment is thus as a result of further submissions by the Second Plaintiff, where it clearly emerged that the Defendant had engaged in gross prohibited conduct that deserves serious consequences.

SUBMISSIONS BY THE FIRST PLAINTIFF IN SUPPORT OF DECISIVE CONSEQUENTIAL ACTIONS AGAINST THE DEFENDANT

17. The First Plaintiff brought to the attention of the KZN Consumer Tribunal that Section 10(1)(e) of the KwaZulu-Natal Consumer Act 04 of 2013 does empower the Consumer Tribunal to set down general principles to govern conflict resolution between consumers and business. The Defendant's actions warrant that the Consumer Tribunal use extra measures in protecting the Second Plaintiff's interests under the circumstances.

- 17.1 The Defendant only released the Second Plaintiff's container after Summons were served on them on the 20th of November 2025; and the Defendants simply ignored those summons, not indicating whether they wanted to defend the matter or not. This forced the Consumer Tribunal to incur costs in allocating Tribunal Members to adjudicate this matter. The First Plaintiff labelled this action by the Defendant as *"direct disregard of the law"*.
- 17.2 The First Plaintiff asserts that *"this dispute could have been easily resolved amicably by the parties concerned if only the Defendant cooperated and communicated effectively with the First and Second Plaintiff"*.
- 17.3 The First Plaintiff further observed that *"the overall attitude of the Defendant was disingenuous and their disregard for the First Plaintiff's Office is also evident from the First Plaintiff's Investigators report and the Second Plaintiff's evidence. The Defendant failed to defend the action and consequently the case was heard on an unopposed basis"*.
- 17.4 All in all, the First Plaintiff concludes that the Defendant consciously acted in a mala fide manner when they repeatedly misled the Second Plaintiff for more than full six months; and that this unfair business practice must be stopped.

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*

20. Section 47

Over-Selling and over-booking

- (1) *This section does not apply to –*
 - (a) *a franchise agreement; or*
 - (b) *a consumer agreement pertaining to the supply of any special-order goods.*
- (2) *A supplier must not accept payment or other consideration for any goods or other consideration for any goods or services if the supplier –*
 - (a) *has no reasonable basis to assert an intention to supply those goods or provide those services;*
or
 - (b) *intends to supply goods or services that are materially different from the goods or services in respect of which the payment or consideration was accepted.*
- (3) *If a supplier makes a commitment or accepts a reservation to supply goods or services on a specified date or at a specified time and, on a date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply those goods or services of the same or better quality, class or nature, the supplier must –*
 - (a) *Refund to the consumer the amount, if any, paid in respect of that commitment or reservation, together with interest at the rate from which the amount was paid until the date of reimbursement; and*

(b) *In addition, compensate the consumer for costs directly incidental to the supplier's breach of the contract, except to the extent that subsection (5) provides otherwise.*

CONSIDERATION OF THE EVIDENCE BEFORE THE TRIBUNAL

21. It is not in dispute that the Defendants did not supply and deliver the container as per the terms and agreement:

21.1 The Defendants made many promises to supply and deliver the container on certain dates, but failed to deliver on each of those dates;

21.2 They treated the Second Plaintiff with utter contempt and disrespect throughout these six months of non-delivery, from June 2025 to December 2025.

21.3 The Second Plaintiff finally got her container on the 23rd of December 2025, when she and her brother decided to stage a "five-hour sit-in" at the gates of the Defendant's business premises. The Defendant finally gave the Second Plaintiff her container there at the business premises' gates. This was a significant breach of the sales contract which entailed the delivery of the container.

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 container 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 R41 000.00 already paid in full for the container, at the time they failed to deliver.

- 22.3 The Defendants were in breach of some legislative provisions of Section 47 in they got paid R41 000 by the Second Plaintiff on 18 June 2025 for a container that was supposed to be delivered “within two weeks”; yet the Second Plaintiff only got this container six months later on the 23rd of December 2025.
23. Directing the Defendants to pay an interest on the amount of R41 000 paid on 18 June 2025, based on the current prime overdraft rate.
- 23.1 For 18 June to 31 July 2025 it will be at 10.75%
- 23.2 For 01 August 2025 to 30 November 2025 it will be 10.5%
- 23.3 For December 2025 it will be 10.25%
24. Given that the Tribunals are not allowed to award punitive consequential damages; Section 47(3) of the CPA does however give the Tribunal the right to “*compensate the consumer for costs directly incidental to the supplier’s breach of the contract*”. Some of the costs directly incidental to the supplier’s breach of contract will include:
- 24.1 The purchase agreement between the parties included “supply and delivery”. The Second Plaintiff was sent on a run-around for six full months without any supply of the container. The Second Plaintiff will need to be reasonably compensated for some of the expenses incurred when she and some people had to directly go to the Defendant’s business premises to demand such “supply and delivery”.
- 24.2 When the container was finally supplied, consequent to the Second Plaintiff’s and her brother’s five hour “sit-in” at the Defendant’s business premises gates; the container was not directly taken to the Second Plaintiff’s business premises, as per the terms of the purchase agreement.
- 24.3 The Defendant had promised to build a concrete slab on which the container would be placed. This was not done; and the Second Plaintiff was forced to incur over R11 270.00 to build such a concrete slab
25. The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements cannot be cancelled, because the container was finally released albeit under very unfortunate circumstances;
26. Directing the Defendants to pay an administrative penalty of R20 000.00 (Fifteen Thousand Rand) and/ or making any other appropriate order contemplated under section 4(2)(b)(ii) of the CPA.

27. Directing the Defendants to refrain from conducting future business in a manner that amounts to prohibited conduct.

ORDER

28. Accordingly, the Tribunal makes the following order:
29. 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. They grossly violated many of the Second Plaintiff's consumer rights when they repeatedly disrespectfully and contemptuously failed to supply and deliver the Second Plaintiff's container for more than six months between 18 June 2025 and 23 December 2025.
30. Interest be paid on the amount of R41 000, at the applicable Prime Overdraft Rates from July 2025 to December 2025.
- 18 June 2025 to 31 July 2025 @ 10.75% = R519.34
 - August, September, October, and November 2025 @ 10.5% = R1435.00
 - December 2025 @ 10.25% = R350.21
 - TOTAL INTEREST PAYABLE BETWEEN 18 JUNE 2025 AND 23 DECEMBER 2025 = R2304.74
31. The Defendant is ordered to compensate / refund the Second Plaintiff a Total Amount of R1 800.00 as verifiable direct incidental costs incurred by the Second Plaintiff when she had to twice go to the Defendant's business premises with her mother and police to enquire about when her container was going to be supplied and delivered (R1200.00); and also an amount of R600.00 the Second Plaintiff paid to her brother as petrol money when they drove to the Defendant's business premises for a "five-hour sit-in" which ultimately resulted in the Defendant supplying the container on 23 December 2025.
32. The Defendant is ordered to compensate the Second Plaintiff an amount of R11270.00, being the amount the Second Plaintiff incurred in constructing the concrete slab on which the container was placed; which should have been done by the Defendant, but was not done by the Defendant as part of their many breaches of contract.

33. The Defendants are ordered to pay the total sum of R15374,74, being the amounts on paragraphs 30, 31 and 32, to the Second Plaintiff's banking account as per details below:

BANK NAME : Standard Bank Of South Africa Ltd
ACCOUNT NAME : OWETHU SBU Trading Enterprise (Pty) Ltd
ACCOUNT TYPE : Business Account
ACCOUNT NUMBER : 1020 4186 348
BRANCH CODE :

Reference: KZNCT14/2025 and name of the Person or Business Making the Payment

34. The Defendants are ordered to pay an administrative penalty of R20 000.00 (Twenty 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 : KZNCT14/2025 and Name of Person or Business making payment

35. The total amount is payable within 30 (Thirty) days of the date of this judgment.
36. The Defendants are ordered to refrain from conducting future business in a manner that amounts to prohibited conduct, for example as they did to the Second Plaintiff over a period of six months, between 18 June 2025 and 23 December 2025.
37. There is no order as to costs.

DATED ON THIS 7th DAY OF FEBRUARY 2026

Dr B. Dumisa
Chairperson

Ms. N. Cawe (Member and Deputy Chairperson) and Mr. S. Mbhele (Member) concurred