

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

Case Number: KZNCT03/2024

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

NNEILENG MSHENGU

SECOND PLAINTIFF

(Name of the Consumer)

and

CUPBOARD TRENDZ trading as

HANDA INTERIOR

FIRST DEFENDANT

Registration Number 2017/070824/07

AVINASH BILLY

SECOND DEFENDANT

HEERASHA ANNIRUTH

THIRD DEFENDANT

Coram:

Prof B. Dumisa	–	Chairperson & Presiding Member
Ms N. Cawe	–	Deputy Chairperson & Member
Ms. A. Sewpersad	–	Alternate Deputy Chairperson & Member

Date of Hearing	–	18 JULY 2024
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Date of Judgment	–	27 AUGUST 2024
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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 Plaintiff’s Investigation Report was deposed to by **Ms VANESSA SHABANGU**, an Assistant Director, a Complaints Handler within the Office of the KwaZulu-Natal Consumer Protector, at its Head Offices at 270 Jabu Ndlovu Street, Pietermaritzburg, in the Province of KwaZulu-Natal.

SECOND PLAINTIFF

5. The Consumer, who is the Second Plaintiff in this matter is **NNEILENG MSHEMNGU**, a major female, who is the resident of Blackridge, Pietermaritzburg, in the Province of KwaZulu-Natal (hereinafter referred to as “the Second Plaintiff” or “the Consumer”).
6. The Second Plaintiff filed the founding affidavit on the 19th of February 2024.
7. The Second Plaintiff lodged her complaint against the Respondent on the 11th of May 2022
8. At the hearing, the Second Plaintiff was represented by Msizi Dube, an Attorney.

DEFENDANTS

9. The First Defendant is **CUPBOARD TRENDZ t/a HANDA INTERIORS Solutions (Pty) Ltd**, with Company Registration Number 2017 /070824/07, with its principal place of business situated at 4 Columbus Rd, Verulam Industrial Park, Unit 1, Verulam, in the Province of KwaZulu-Natal (hereinafter referred to as “the Respondent”).
10. The Second Defendant is **AVINASH BILLY**, the co-owner of the first Defendant.
11. The Third Defendant is **HEERASHA ANNIRUTH**, the co-owner and wife / partner of the Second Defendant.
12. The Defendants had not filed an intention to defend or an answering affidavit. The Defendants did attend the hearing, but the Tribunal did not allow them to participate at the hearing on grounds that their failure to file the Notice of Intention to Defend or an answering affidavit meant they were not entitled to participate at the hearing, as per Rule 31 of the High Court Uniform Rules of Court which applies “*whenever a defendant is in default of the delivery of a notice to defend or of a plea, the plaintiff may apply for judgment by default*”. The Tribunal was satisfied that the Defendants were aware of the consequences of not adhering to the processes, as clearly mentioned in the summons. Hence the Tribunal was entitled to proceed with the matter on a default basis.
13. The Defendants can be regarded as serial consumer abusers, as a second matter against them was heard by the KwaZulu-Natal Consumer Tribunal on this same day / date, where the Defendant is again accused of engaging in prohibited conduct.

APPLICATION TYPE AND ORDER SOUGHT

14. This KZN Consumer Tribunal (hereinafter referred to as “the Tribunal”) derives the jurisdiction for hearing this matter under Sections 10 and 21 of the KwaZulu-Natal Consumer Protection Act, 4 of 2013 (the KZNCPA). This matter is in terms of Section 4(5)(a), Section 15, Section 53, Section 54, Section 55, and Section 56, of the Consumer Protection Act No 68 of 2008 (the CPA).

15. The Second Plaintiff sought an order against the Respondent in the following terms:

15.1 The Defendant's conduct is declared prohibited conduct in contravention of Section 4, Section 15, Section 53, Section 54, Section 55, and Section 56 of the Consumer Protection Act 68 of 2008;

15.2 Directing the Defendant's to refund the Second Plaintiff a total amount of R118 729.00 (Hundred and Eighteen Thousand Seven Hundred and Twenty-Nine Rand) which includes the amount of R86000.00 for monies paid for work not done and R32729.00 for repairing of defective work;

15.3 Directing the Defendant's to pay interest at the prescribed rate a tempore mora, in terms of the Prescribed Rate of Interest Act 53 of 1975;

15.4 To order the Defendant's to pay all the above payments within 15 days of the judgment to the Second Plaintiff's bank account;

15.5 Directing the Defendant's to refrain from conducting future business in a manner that is inappropriate and to make any other order that the Consumer Tribunal deems necessary;

15.6 Directing the Defendants, jointly and severally, the one paying the other to be absolved, to pay an administrative penalty in a sum to be determined by the Consumer Tribunal and / or making any other appropriate order contemplated under section 4(2)(b)(ii) of the CPA; and

15.7 Any further and/or alternate relief.

MATTERS TO BE DECIDED

16. The Tribunal must decide whether;

16.1 The Defendant's breached the provisions of the Act as alleged; and

16.2 The appropriate relief to be granted.

BACKGROUND

17. The Second Plaintiff submitted as follows:

17.1 On or about the 6th May 2021 the Second Plaintiff and the Defendants had both a verbal agreement and a written agreement whereby the Defendant undertook to perform services relating to the manufacturing, installation, and fitting of cupboards on or about May 2021;

17.2 The Defendants quoted the Second Plaintiff an amount of R308 000.00 (Three Hundred and Eight Thousand Rands).

17.3 The Second Plaintiff made the first instalment of R150 000.00 on 14 May 2021; second instalment of R110 000.00 was made on 7 May 2021, and the third instalment of R48 000.00 was made on 11 September 2021.

17.4 Upon the receipt of payments of the aforesaid amount of R308 000.00, the defendant undertook to commence with the services which was to be completed within 3 (three) months from date of the final payment.

17.5 On or about May 2021 the Defendant through an unknown shopfitter commenced the work at the Second Plaintiff's residence. Full access was given to the Defendant pursuant to the agreement. The Defendant came several times to the Second Plaintiff's residence, as agreed, until there was a breakdown in the relationship which arose due to the Defendant's poor workmanship; failure to pitch up for work on the agreed dates; and that the Defendant ultimately disappeared and never returned thereafter to complete the work.

17.6 The Defendant completed the following work albeit with defects, where indicated:

- 17.6.1 The bathroom cabinet;
- 17.6.2 The bedroom cupboards; incomplete and defective;
- 17.6.3 The study room cabinet with defects;
- 17.6.4 The kitchen cupboards, with defects;
- 17.6.5 Passageway security system; and
- 17.6.6 Study room plasma with defects.

17.7 The following work was not completed:

- 17.7.1 Plasma in the main lounge;
- 17.7.2 Guest bedroom pedestals;
- 17.7.3 Dresser with mirror;
- 17.7.4 Kitchen glass splashback; and
- 17.7.5 Bathroom cabinet door.

17.8 The Second Plaintiff stated that immediately after the installation and fitting of the works mentioned under 17.5 above, she noticed glaring faults and defects with the work completed. She contacted the defendants via WhatsApp to enquire about such observations and expressed her dissatisfaction of the workmanship namely on:

- 17.8.1 The unmeasured mirror in the main bedroom;
- 17.8.2 Electrical wiring that subsequently was joined together with tape for the bookshelf;
- 17.8.3 Bookshelf glass door that fell off; breaking glass
- 17.8.4 Incorrectly measured glass on the dresser;
- 17.8.5 Dresser handles that were glued and fell off; and
- 17.8.6 Dresser and drawers not joined together.

17.9 The Second Plaintiff said she repeatedly raised all of these concerns and complaints with the Defendants, and more specifically with the Third Defendant, who advised that at the end of completed work a snag list would be completed, and the defects would be remedied accordingly. All the First Plaintiff's attempts to amicably resolve these matters with the Defendants failed, hence her decision to approach the First Plaintiff, the KZN Consumer Affairs Office.

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT

18. The First Plaintiff submitted that all attempts to resolve this complaint amicably with the Defendants had failed:

- 18.1 The Defendant appeared at the office of the First Plaintiff on the 30th of May 2022 as part of the investigations;
- 18.2 At that meeting the Defendant acknowledged the faults noted in the work completed and furthermore acknowledged the outstanding work. At that stage they did not try to justify themselves. They apologized for the inconvenience caused to the Second Plaintiff; and requested that they be given two weeks to decide on a proposed settlement of the complaint.

18.3 The Defendants immediately became unco-operative from then onwards, not even responding to telephonic calls or email or WhatsApp messages from both the First Plaintiff and the Second Plaintiff.

18.4 Based on the Respondent's failure to cooperate with the First Plaintiff, the latter decided to refer this matter to the KZN Consumer Tribunal for adjudication.

THE HEARING

19. The hearing was held on the 18th of July 2024.

19.1 The matter was heard on a default basis;

19.2 The Respondent had not formally indicated their intention to defend the matter, nor did they submit an answering affidavit; hence the Tribunal applied Rule 31 of the High Court Uniform Rules which states "*whenever a defendant is in default of the delivery of a notice to defend or of a plea, the plaintiff may apply for judgment by default*". In this particular case the Tribunal exercised its discretion to hear this matter on a default basis, without the Second Plaintiff initiating the process.

19.3 At the hearing, the First Plaintiff and the Second Plaintiff confirmed the details of the complaint as contained under the background above.

APPLICABLE SECTIONS OF THE CONSUMER PROTECTION ACT 68 of 2008

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 case of delivery of goods; or

PART H of the CPA

Right to Fair Value, good quality and safety (ss 53 – 61)

21. Section 53

Definitions applicable to this part

- (1) In this Part, when used with respect to any goods, component of any goods, or services –
- (a) **'defect'** means-
 - (i) any material imperfection in the manufacture of the goods or components, or in performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or
 - (ii) any characteristic of the goods or components that renders the goods that or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances;
 - (b) **'failure'** means the inability of the goods to perform in the intended manner or to the intended effect;
 - (c) **'hazard'** means a characteristic that-
 - (i) has been identified as, or declared to be a hazard in terms of any other law; or
 - (ii) presents a significant risk of personal injury to any person, or damage to property, when the goods are utilised; and
 - (d) **'unsafe'** means that, due to characteristic, failure, defect or hazard, particularly injury or property damage to the consumer or to other persons.

22. Section 54

Consumer's rights to demand quality service

- (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; 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.*
- (2) *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.

CONSIDERATION OF THE EVIDENCE BEFORE THE TRIBUNAL

23. It is common cause that the parties entered into an agreement of contract in terms of which the Defendant undertook to manufacture, installation and fitting of cupboards at the Second Plaintiff's house at a cost of R308 000.00 (Three Hundred and Eight Thousand Rand).

23.1 The Second Plaintiff in accepting the quotation made payments of the total amount quoted above;

23.2 The Second Plaintiff had a reasonable expectation that the Defendant's would complete the work within three months, as per the Defendant's undertakings;

23.3 It was solely based on these misrepresentations that the Second Plaintiff entered into the agreement with the Defendant.

24. In dealing with this issue, the Tribunal will need to take into consideration several relevant factors:

24.1 The Defendants are repeat wrongdoers, serial consumer abusers. They behaved in the same way in another case, KZNCT04/2024 Rodney Yogambaram Moonsamy v Cupboard Trendz trading as HANDA INTERIORS, which was also heard on the same day / date as this one on 18 July 2024.

24.2 Given the fact that the Defendants have total disrespect and disregard for the KZN Consumer Tribunal processes, whatever ORDER the Tribunal will make on this case must seriously take into consideration the fact that consumer abusers must not be allowed to abuse consumers with impunity;

24.3 A formal database of all the consumer abusers must be created where the names of businesses, the names of those owners of those businesses, and the physical geographic locations of those businesses must be recorded; and

24.4 Given the fact that the Defendants showed both the Second Plaintiff and the Office of the Consumer Protector complete reckless contemptuous disregard and disrespect when efforts were

being made to give the Second Plaintiff necessary redress, the Tribunal therefore concludes that the Defendant had and still has absolutely no intention to effect the necessary repairs to the Second Plaintiff's cupboard installations.

25. **ORDER**

The Tribunal therefore grants an order against the Defendants in the following terms:

25.1 The Defendants' conduct is declared prohibited conduct in contravention of section 19, Section 53, Section 54, Section 55, and Section 56 of the Consumer Protection Act 68 of 2008;

25.2 The Defendants are ordered to refrain from conducting itself in such a manner henceforth;

25.3 The Defendants are ordered to pay and refund the Second Plaintiff a total refund amount of R118729.00 (Hundred and Eighteen Thousand Seven Hundred and Twenty Nine Rand) which includes the amount of R86 000.00 for monies paid for work not done and R32 729.00 for repairing of defective work.

25.4 The Defendants are ordered to pay interest on the amount of R118 729.00 at the rate of 11.75% from 01 September 2021 to the date of payment both days inclusive; and

25.5 The Defendants are ordered to make payment within **15** days of the granting of this order to the Second Plaintiff's Bank Account as follows:

BANK NAME : ABSA

ACCOUNT NAME : N MSHENGU

ACCOUNT NUMBER: 4059709570

Reference : KZNCT03/2024 Mshengu v Cupboard Trendz

25.7 The Defendants are ordered to pay an administrative penalty of R60 000.00 (Sixty Thousand Rand only) within sixty (60) days of this judgement 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 – KZN

BRANCH CODE : 630495

Reference : KZNCT03/2024 Mshengu v Cupboard Trendz

25.8. The Defendants are warned henceforth to refrain from conducting future business in the manner that is the subject matter of this complaint and that is in contravention of the CPA.

25.9. The Defendants are repeat wrongdoers, serial consumer abusers, who were previously found by this KZN Consumer Tribunal to have engaged in prohibited conduct and deliberately failed to comply with the ORDER of this Tribunal. It is on this basis that the First Plaintiff is ordered to record this Defendant's name and other details in the list of adverse notations to be maintained and kept by their Office. The Office must record the name of the business, the name of the person conducting such business and the finding of a Consumer Tribunal in respect of subsection 2(a), (b), and (c) made in terms of S10(f) of the KwaZulu-Natal Consumer Protection Act 04 of 2013.

DATED AT DURBAN ON THIS 27TH DAY OF AUGUST 2024

Prof B Dumisa
Chairperson and Presiding Member

Ms N Cawe (Deputy Chairperson & Member and Ms A Sewpersad (Alternate Deputy Chairperson & Member) concurred.