

**IN THE KWAZULU-NATAL CONSUMER TRIBUNAL
HELD IN PIETERMARITZBURG**

Case number: **KZNCT09/2025**

In the matter between:

**KWAZULU-NATAL CONSUMER PROTECTOR
NOMPUMELELO ZUMA
(Name of the Consumer)**

**FIRST PLAINTIFF
SECOND PLAINTIFF**

and

**QHUDENI MS HOLDINGS t/a
MTHEMBU BUILDERS HARDWARE (PTY) LTD AND OTHERS
(Reg No. 2021/434864/07)**

DEFENDANT

Coram:

Prof. B Dumisa	–	Chairperson & Presiding Member
Ms A. Sewpersad	–	Member & Alternative Deputy Chairperson
Adv. N. Nursoo	-	Member

Date of Hearing	-	27 August 2025
Date of Settlement Order	-	01 October 2025

SETTLEMENT ORDER

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

(the “Act”) (hereinafter referred to as “the First Plaintiff”), with head Offices at 270 Jabu 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 **Ryan Moodley**, a Deputy Director in the Office of the KwaZulu-Natal Consumer Protector, in the employ of the First Plaintiff.
4. The First Plaintiffs Investigation Report was deposited by Ms **Tholakele Khanyi**, an Investigator in the Consumer Complaints Handling Unit within the Office of Consumer Protector KwaZulu-Natal, at the EDTEA Pietermaritzburg Head-Offices.

SECOND PLAINTIFF

5. The Consumer, who is the Second Plaintiff in this matter is Ms **Nompumelelo Zuma**, a major female who resides in an area called Snathing Emahlathini, in Imbali, Pietermaritzburg, 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 13th of January 2025.
7. At the Hearing, the Second Plaintiff represented herself.

DEFENDANT

8. The Defendant in this matter is **Qhudeni MS Holdings**, a private company that trades as **Mthembu Building Hardware (Pty) Ltd** and duly registered in terms of the company laws of the Republic of South Africa, with its principal place of business situated at 1 Archie Gumede Drive, Mason Mill, Pietermaritzburg, in the Province of KwaZulu-Natal (the “Defendant”).

9. The Defendant was represented at the hearing by Mr **M Dlova**, a major male who had the Letter of Authority, Power of Attorney, giving him the proper mandate to represent the Defendant at the Hearing.

BACKGROUND

10. On or around the **18th of July 2022** the Second Plaintiff entered into a Lay-Bye Sale transaction with the defendant in the ordinary course of business as a Builders Hardware after being their customer for a long time:
 - 10.1 She was only given a Pro Forma Invoice / Quotation which indicated the amount of R33445.50 (Thirty-three thousand Four Hundred and Forty-Five Rand and Fifty Cents. This indicated the various categories of building material which comprises this lay-by sale.
 - 10.2 Under this unwritten contract, the Second Plaintiff, who was unemployed, was going to make unspecified number monthly instalments according to her affordability until finalization and no specific lay-by period specified. One employee of this business assured the Second Plaintiff that this was normal general practice of their business.
 - 10.3 The Second Plaintiff paid the lay-by first instalment of R4000.00 in the first month.
 - 10.4 During the period of two years six months, she paid between R1000.00 to R4000.00 per month; and no goods were ever collected or delivered.
 - 10.5 On the 10th of January 2025, after realizing that her financial situation had become worse; she decided to collect the building material to the value of R20 000.00 that she purported to have made since they made that unwritten lay-by agreement.
 - 10.6 The store manager, Mr Dlova who represented the shop at the Hearing, had refused to give her that building material, on various grounds, including that the store was not liable for payments made to the store "as the hardware store management has changed".

10.7 It was on these grounds that, on the 13th of January 2025, the Second Plaintiff lodged the formal complaint electronically with the KwaZulu-Natal Consumer Protector Office, where Miss Tholakele Khanyi was assigned to investigate the matter.

APPLICATION TYPE AND ORDER SOUGHT

- 11.** The KZN Consumer Tribunal (hereinafter referred to “the Tribunal”) derives the jurisdiction for hearing this matter under Section 21 of the KwaZulu-Natal Consumer Protection Act, 4 of 2013 (the KZNCPA).
- 12.** The Second Plaintiff wanted the Defendant to reimburse the Second Plaintiff in full for the lay-by payments made; or to be given building material worth R20000.00 which she claimed she had already paid for.

THE FIRST PLAINTIFF’S EFFORTS TO RESOLVE THIS COMPLAINT

- 13.** The First Plaintiff tried to mediate this matter between the parties; which culminated in a Settlement Agreement being agreed to by both parties. See “Annexure A” attached.

THE HEARING

- 14.** The matter was set down for hearing on the Wednesday the 27th of August 2025.
- 15.** The main reason for the Hearing was for the parties to apply for the Tribunal to make their Settlement Agreement an Order of the KZN Consumer Tribunal.

THE KZN CONSUMER TRIBUNAL'S COMMENTS ON THE PROPOSED SETTLEMENT AGREEMENT

16. Both the National Credit Act 34 of 2005 (the NCA) and the Consumer Protection Act 68 of 2008 (the CPA) do not explicitly say that all the business transactions must be in writing for them to be legally binding. But they both state that the terms of contracts must be clear.
 - 16.1 Section 64 of the National Credit Act only deals with "*Right to information in plain and understandable language*" deals with this matter at a very superficial level;
 - 16.2 Section 22 of the Consumer Protection Act is simply a direct duplication of Section 64 of the National Credit Act, also dealing with this matter at a very superficial level.
17. Unfortunately, despite no need for the sales contracts to be in writing; the entire transaction between the Second Plaintiff and the Defendant lacked the seriousness required for people entering a legally binding transaction. Unfortunately, the Defendant entered such a legally unsound transaction purportedly on wrong grounds that "it was a general practice of their business".
 - 17.1 The absence of any compulsion in the two consumer legislations, the NCA and the CPA, for all consumer contracts to be reduced into writing for them to be legally binding, is the major reason why this KwaZulu-Natal Consumer Tribunal cannot easily conclude that the Defendant engaged in prohibited conduct by not having any formal written agreement with clear terms on this lay-by agreement without any specific duration on how long it would last.
 - 17.2 It was precisely on these grounds that the pro-forma invoice/ quotation that was given to the consumer was not helpful when the Defendant's interpretation of the terms of that lay-by agreement differed significantly from that interpretation by the consumer:
 - 17.2.1 The consumer believed that she could just continue paying even after two years until she finished paying R33 445.50.

- 17.2.2** On the other hand, the store manager said, the lay-bye agreement is confined to less than six months.
- 17.2.3** The consumer said that she was paying for building material up to R33 445.50.
- 17.2.4** The store manager said that such lay-bye agreements, if any, are only to the value of R4000.00
- 18.** On the other hand, the very bad quality of copies supplied to the Office of KZN Consumer Protector by the Second Plaintiff were of such bad and unclear that it is very difficult to rely on them.
- 19.** To make things worse, the reporting of this matter was very close to prescription; this matter was bound to face various unavoidable legal challenges on prescription, which could have resulted in unending interlocutory challenges.
- 20.** It was only on these grounds, listed above, that the Tribunal reluctantly conceded that the Settlement Agreement agreed to between the parties is, under the circumstances, the best compromise.
- 21.** It is important that both the organized business formations and the government structures must synergistically work together in teaching consumers about their consumer rights to protect them from such situations where they cannot be easily given redress, because their own conduct may be pointing otherwise. The failure of the consumer to submit clear receipts and detailed information, where necessary, proved to be the major obstacle in satisfactorily resolving this matter.
- 22.** It is important that significant legislative amendments be made on both legislations, the NCA and the CPA, be made in order to avoid all the challenges that we encountered on this matter, where we are left uncomfortable that justice was not done on the issue of redress.

ORDER

23. The Settlement Agreement between the parties, on case number KZNCT09/2025, is hereby made an ORDER of this KwaZulu-Natal Consumer Tribunal. See Annexure A.

DATED ON THIS 1st of October 2025

[Signed]

Prof B Dumisa

PRESIDING TRIBUNAL MEMBER

Ms A Sewpersad (Member & Alternate Deputy Chairperson) and Adv N Nursoo concurring

IN THE KWAZULU-NATAL CONSUMER TRIBUNAL, HELD AT
PIETERMARITZBURG

CASE NO: KZNCT09/2025

In the matter between:

KWAZULU-NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

NOMPUMELELO ZUMA

IDENTITY NUMBER: 820403271084

SECOND PLAINTIFF

and

QHUDENI MS HOLDINGS t/a MTHEMBU BUILDERS

HARDWARE (PTY) LTD AND OTHERS

REGISTRATION NUMBER: 2021/434864/07

DEFENDANT

SETTLEMENT AGREEMENT

WHEREAS the consumer lodged a complaint with the office of the KwaZulu-Natal Consumer Protector in terms of the Consumer Protection Act 68 of 2008 and the KwaZulu-Natal Consumer Protection Act 04 of 2013.

AND WHEREAS the office of the Consumer Protector KwaZulu-Natal facilitated the handling of the complaint which was referred to the KwaZulu-Natal consumer Tribunal.

AND WHEREAS subject to the confirmation of the Consumer Tribunal in terms of S10 of the KwaZulu-Natal Consumer Protection Act 04 of 2013.

First and Second Plaintiffs and Defendant request that the following settlement agreement be made an order of court by consent before the KwaZulu-Natal Consumer Tribunal :

Initial here: N.M. S.M.



1.

That the Defendant hereby acknowledges the transaction through the lay bye agreement with the Second Plaintiff and hereby undertakes to refund the Second Plaintiff an amount of R11 000.00 (Eleven Thousand Rand) within fourteen (14) working days from the date of signature of this settlement agreement by all the parties hereto.

2.

The Defendant undertakes and agrees that a credit note in the name of the Second Plaintiff which will be valid from the date this settlement agreement is made an order until the expiry of a period of twelve months. The credit note will permit the Second Plaintiff to purchase a variety building material goods at the Defendant business during this period.

3.

This settlement agreement is in full and final settlement of any of the parties claims against the other, and none of the parties to this settlement agreement shall have any further claims against the other in respect of the above legal action instituted, or any additional claims which any party to this settlement agreement may allege to have against each other in respect of, or pertaining to the previous sale agreements, save and except as provided for in this settlement agreement;

Initial here: _____

P.M.

S.M.



4.

This settlement agreement contains the entire agreement between the Plaintiffs and Defendants, and supersedes any and all prior oral or written arrangements or agreements. The Plaintiffs and Defendants shall not be bound by any express or implied term, representation, promise or the like not recorded herein, or incorporated herein by reference thereto;

5.

No amendments to, or variation, or cancellation of this settlement agreement, including an amendment, variation or cancellation of this paragraph, shall be of any force or effect unless reduced to writing and signed by both the Plaintiffs and Defendants, or their duly authorised legal representatives;

6.

No relaxation or indulgence granted by any party to this settlement agreement to any other party to this settlement agreement, in respect of this settlement agreement, shall be deemed to be a waiver of that party's rights in terms of this settlement agreement.

Pietermaritzburg



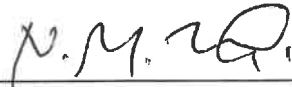
S. M.

N. M.

DATED at ~~DURBAN~~ this 27th day of August 2025.



FOR AND ON BEHALF OF THE FIRST
PLAINTIFF (AND WHO BY HIS
SIGNATURE HERETO CONFIRMS
THAT HE/SHE IS DULY AUTHORISED
TO DEPOSE HERETO)



NOMPUMELELO ZUMA FOR AND ON
BEHALF OF THE SECOND PLAINTIFF
(AND WHO BY HIS SIGNATURE
HERETO CONFIRMS THAT HE/SHE IS
DULY AUTHORISED TO DEPOSE
HERETO)



MR DLOVA FOR QHUDENI MS
HOLDINGS t/a MTHEMBU BUILDERS
HARDWARE (PTY)LTD AND OTHERS
FOR AND ON BEHALF OF THE
DEFENDANT (AND WHO BY HIS
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