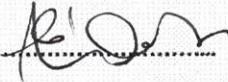


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NO.: A269/2021

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
<u>15/06/2023</u>	
	

In the matter between:

NATIONAL CONSUMER COMMISSION

Appellant

And

SCOOP CLOTHING CC

First Respondent

THE NATIONAL CONSUMER TRIBUNAL

Second Respondent

JUDGMENT

van der Westhuizen, J

- [1] The National Consumer Commission, the appellant, appealed against the decision by the National Consumer Tribunal, the second respondent, to review and set aside a Compliance Notice issued in terms of the Consumer Protection Act.
- [2] The first respondent, Scoop Clothing CC, filed a notice to abide the decision of the Court of Appeal. The second respondent did not oppose the appeal. Presumably it will abide the Appeal Court's decision.
- [3] An application was launched by the South African Clothing and Textile Workers Union (SACTWU) for leave to intervene primarily upon the ground that its members' rights to job security were at stake.
- [4] The review decision followed upon an application by the first respondent to have a Notice of Compliance reviewed and set aside. That application was successful. The appellant opposed that application. An answering affidavit was filed by the appellant.
- [5] The Notice of Compliance was issued by the appellant that followed upon a detention notice that was received by the appellant from the South African Revenue Services, Customs, in respect of alleged contraventions of the Consumer Protection Act, 68 of 2008. A consignment of imported goods, the alleged property of the first respondent, was detained on the basis that the goods did not comply with the labelling requirements of Regulation 6 of the Regulations promulgated in terms of section 120 of the Consumer Protection Act. The non-compliance of the relevant regulations related to the absence of the trade description and country of origin. In addition, the labelling on the goods did not conform to the South African national standards for fibre content and care labelling as required by Law.
- [6] The Compliance Notice required the first respondent to:
 - (a) Remove the non-compliant goods back to their country of origin; alternatively

- (b) To destroy the non-compliant goods; and
- (c) To refrain from importing goods in contravention of the provisions of the Consumer Protection Act.

[7] This appeal was premised upon a number of grounds, namely:

- (a) The alleged requirement that the Compliance Notice was to have contained the results of an investigation by an inspector on behalf of the appellant, together with the details of the investigation process and substantiation of allegations and thereby no investigation was conducted in terms of section 7(3) of the Consumer Protection Act;
- (b) The Compliance Notice was defective in that the actions of the appellant prior to the issuing of that notice did not constitute just administrative action in terms of section 3 of PAJA;
- (c) The disregard of the content of the answering affidavit filed on behalf of the appellant on the basis of the lacking of the attaching the Inspector's report;
- (d) That the Compliance Notice Directive was "punitive" in nature;
- (e) That the first respondent was not given an opportunity to remedy the non-compliance following on a provisional release;
- (f) That the goods may be released in terms of the Customs External Policy Clearance Declaration.

[8] The appeal is further premised upon the second respondent having erred in the following respects;

- (a) granting an order cancelling the Compliance Notice *in toto*;
- (b) granting an order modifying the Compliance Notice by granting the first respondent to:
 - (1) complete the importation of the non-complying goods; and
 - (2) to attach to each of the goods labels indicating the Country of Origin, Fibre Content and Wash Care.

[9] The appellant submitted that the second respondent ignored the provisions of section 3(5) of PAJA. That section provides that where an administrator is empowered by any empowering provision to follow a procedure which is fair but different from the provisions of section (2) of PAJA, such administrator may act in accordance with that different procedure.

[10] Sections 71(2) and 72(1) of the Consumer Protection Act require the initiating of a complaint and to direct an inspector to investigate alleged contraventions of the Consumer Protection Act. This was clearly done by the appellant. Furthermore, the Consumer Protection Act prescribed the procedure to be followed prior to the issuing of the Compliance Notice. That procedure is different to that of section 3(2) of PAJA. However, it is permissible to follow that procedure prescribed in terms of the provisions of section 3(5) of PAJA. The second respondent ignored the evidence placed before it by the appellant on frivolous grounds. It was not raised by the first respondent in that application, nor was the appellant called upon to deal with the issue.

- [11] The content of a Compliance Notice is prescribed by the provisions of section 100(3) of the Consumer Protection Act. That section provides:

"(3) A compliance notice contemplated in subsection (1) must set out—

- (a) the person or association to whom the notice applies;*
- (b) the provision of this Act that has not been complied with;*
- (c) details of the nature and extent of the non-compliance;*
- (d) any steps that are required to be taken and the period within which those steps must be taken; and*
- (e) any penalty that may be imposed in terms of this Act if those steps are not taken."*

- [12] It follows from the foregoing that there is no requirement to refer to, nor to include results of any investigation in terms of sections 71(2) or 72(1) of the Consumer Protection Act. This issue was not raised by the first respondent in its application, neither was the appellant called upon to deal with the issue.

- [13] Section 24(5) of the Consumer Protection Act provides as follows:

"(5) The producer or importer of any goods that have been prescribed in terms of subsection (4) must apply a trade description to those goods, disclosing—

- (a) the country of origin of the goods; and*
- (b) any other prescribed information"*

- [14] Regulations 6(1)(a)(i) and (b) of the regulations promulgated in terms of the provisions of section 120 of the Consumer Protection Act provide that the importation into the Republic of goods specified in annexure "D" to the regulations are prohibited. The prohibition is subject to compliance with the requirements of section 22 of the Consumer Protection Act, in that a trade description is applied to such goods in a conspicuous and easily legible manner stating the country in which they were

manufactured, produced or adapted. It is further required that such goods conformed to the South African national standards for fibre content and care labelling as published in Government Gazette 2410 of 2000 dated 30 June 2000.

- [15] It follows that the Compliance Notice issued complied with the provisions of section 100(3) of the Consumer Protection Act. The validity of the Compliance Notice was not attacked by the first respondent. The latter merely sought leniency in respect of the clear non-compliance of section 24 read with regulations 6(1)(a)(i) and (b) of the Consumer Protection Act. The said Act does not provide any leniency to be granted for non-compliance. Non-compliance is met with the prohibition of importation of non-compliant goods.
- [16] It is submitted on behalf of the appellant that the second respondent granted an order that was incompetent in the circumstances. Furthermore, the second respondent had no authority to grant an order not permitted in terms of the Consumer Protection Act and its regulations. Once an order was granted cancelling the Compliance Notice, that notice cannot be modified or amended. Neither can an order be granted in contra-distinction to the provisions of the Consumer Protection Act and its Regulations.
- [17] It follows that the appeal stands to be upheld.
- [18] There remains the application to intervene as a second appellant. As alluded to earlier, SACTWU applied to intervene. A Notice of Motion requesting leave to intervene was filed supported by an affidavit. It was premised upon the judgment and order of the second respondent being contrary to the law, affected the vested rights of the employees in the clothing and textile sector in terms of job security and was further irrational, arbitrary and *mala fide*. In principle SACTWU supported the submissions of the appellant, although it wished to protect its own

interests and that of its members under the principle of unconstitutionality and illegality.

[19] In view of the approach taken in this judgment, this court need not entertain the submissions on unconstitutionality or illegality. It follows that the intervening party would not add to what was before this court of appeal on the merits. Accordingly, the application to intervene cannot succeed and stands to be refused.


I propose the following order:

1. The application to intervene is refused;
2. The appeal is upheld;
3. The order of the Consumer Tribunal is set aside and substituted with the following order:

"The Review Application is dismissed";

4. No order as to costs is made.


C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT


M D BOTSI-THULARE
ACTING JUDGE OF THE HIGH COURT

On behalf of Appellant:
Instructed by: L Biyana
National Consumer Commission

On behalf of First Respondent:
Instructed by: No appearance

On behalf of Second Respondent:
Instructed by: No appearance

On behalf of the Intervener:
Instructed by: L A Maisela
Mkhwanazi Inc.

Date of Hearing: 13 April 2023

Judgment Delivered: 15 June 2023