

**IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION**

Case number: **NCT/358791/2024/73(2)(b)**

In the matter between:

NATIONAL CONSUMER COMMISSION

APPLICANT

and

HOME RENOVATIONS CAPE TOWN (PTY) LTD

RESPONDENT

Coram:

Ms N Maseti - Presiding Tribunal member

Mr S Mbhele - Presiding Tribunal member

Dr MC Peenze - Tribunal member

Date of hearing - 14 February 2025

Date of Judgment - 15 February 2025

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is the National Consumer Commission (the applicant), a juristic person established in terms of section 85(1) of the Consumer Protection Act 68 of 2008 (CPA). The applicant is responsible for enforcing the CPA by monitoring the consumer market to ensure prohibited conduct and offences are prevented, detected, and prosecuted.
2. Ms Imrhan Magoro, the applicant's legal advisor represented the applicant at the hearing.

3. The respondent is Home Renovations Cape Town (Pty) Ltd (the respondent). It is a private company registered under the company laws of the Republic of South Africa, with registration number 2015/170238/07. Its physical address is 32 Harvard Drive, Cape Town, Western Cape. The respondent is defined as a supplier per section 1 of the CPA.
4. The respondent attended the hearing as an observer and did not oppose this application. Accordingly, the matter was heard on a default basis.

TERMINOLOGY

5. A reference to a section in this judgment refers to a section of the CPA.
6. A reference to a rule in this judgment refers to the Rules of the National Consumer Tribunal.¹

APPLICATION TYPE

7. This is an application in terms of section 73(2)(b) in which the applicant alleges that the respondent has contravened specific provisions of the CPA and, in doing so, has engaged in prohibited conduct. The applicant seeks an order to that effect and for the National Consumer Tribunal (the Tribunal) to impose an administrative fine of R1 000 000.00 on the respondent.

PROCEEDING ON A DEFAULT BASIS

8. On 23 October 2024, the court sheriff served the application at the respondent's business premises. A copy was also served on the respondent by email.
9. The applicant filed this application with the Tribunal on 25 October 2024, and the Registrar issued a notice of complete filing on 19 November 2024.
10. In terms of rule 13(2), the respondent had 15 business days to serve an answering affidavit and file the same with the Registrar. However, it failed to do so.
11. The applicant did not file an application for a default order under rule 25(2).

¹ GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007 (Government Gazette No. 30225).

12. Due to the pleadings being closed, the Registrar issued a notice of set down to all the parties on 9 January 2025, setting the matter down for hearing on 14 February 2025.
13. Rule 13(5) states that any fact or allegation in the application or referral not explicitly denied or admitted in the answering affidavit will be deemed admitted by the respondent.
14. Therefore, in the absence of an answering affidavit filed by the respondent, the applicant's application and all the allegations contained therein are deemed to be admitted.

BACKGROUND

15. On 9 May 2023, Mr Francois George Malherbe (the consumer) filed a complaint with the applicant. The complaint detailed that the consumer entered into a house renovation agreement with the respondent in October 2021 for R478,545.00. Between 21 October 2021 and 28 April 2022, the consumer paid R467,498.00 towards the contracted amount. Consequently, the outstanding balance was R11,567.00.
16. During the renovation process, the consumer requested additional renovations that were not part of the original agreement. The respondent provided a quote of R58,810.00 for the additional renovations.
17. As the renovations progressed, the consumer noticed various defects and poor workmanship in the services delivered by the respondent. Poor workmanship was evident in the following respects:
 - (i) The pool building was poorly renovated, and the pool pump house was never built;
 - (ii) There was a hole in the pool;
 - (iii) The paving around the pool collapsed;
 - (iv) Electric appliances as installed were not functional, and no electricity certificate was issued;
 - (v) The ceiling and walls started leaking after repairs;

- (vi) The sliding Doors were non-functional;
 - (vii) Installed tiles cracked and painted boundary walls started to peel off;
 - (viii) Almost every renovated area had a defect of some sort; and
 - (ix) Some areas that should be renovated were not completed.
18. After the poor services and workmanship were discovered, the consumer requested the respondent to correct the defects and complete the contract. The respondent failed to correct the defects and halted all renovation work. According to the respondent, payment of the outstanding balance was required before he could correct the defects and complete the renovations.
19. Based on the above, the applicant formed a reasonable suspicion that the respondent had committed contraventions of the CPA and investigated the complaint.

THE APPLICANT'S SUBMISSIONS

20. At the hearing and in its papers, the applicant submitted that the respondent's workmanship on the renovation project was of poor quality, leading to various defects. Also, the respondent did not attend to all the renovations under the house renovation agreement. Some areas were supposed to be renovated but were not.
21. The applicant submitted that the respondent failed to renovate the consumer's house to the standard contemplated in section 54(1), and as such, the respondent has contravened section 54(1)(b) and (c).
22. The applicant further submitted that since the respondent has failed to remedy the defects, the respondent's failure to refund a reasonable amount paid by the consumer for the services amounts to a further contravention of section 54(2).
23. The applicant requested the Tribunal to impose an administrative fine of R1 000 000.00 on the respondent. It stated that although it could not obtain and provide the Tribunal with the respondent's financial statements, the Tribunal could still impose the proposed fine as requested.

APPLICABLE RULE AND SECTIONS OF THE ACT

24. Rule 13(5) states that any fact or allegation in the application or referral not explicitly denied or admitted in an answering affidavit will be deemed admitted by the respondent.
25. Section 73(2)(b) states that if the applicant believes that a person has engaged in prohibited conduct, the applicant may refer the matter to the Tribunal.
26. Section 54(1) (b-c) states that when a supplier undertakes to perform any services for a consumer, the consumer has the right to the performance of those services, in a manner and quality that persons are generally entitled to expect. In addition, the goods used by the supplier must be free of defects and of a quality that persons are generally entitled to expect.
27. Section 54(2) (a-b) states that if a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to remedy the defect in quality or refund the consumer a reasonable portion of the price paid for the services performed.

CONSIDERATION OF THE EVIDENCE

28. By failing to oppose the matter, the respondent lost the opportunity to defend the allegations made against it. The Tribunal is seized only with the applicant's documentary evidence and oral arguments. In terms of rule 13(5), the Tribunal deems the facts alleged by the applicant as admitted by the respondent because it elected not to oppose the matter.
29. The consumer identified the defects and poor services during December 2021, which defects were not corrected. There is no evidence that the applicant misused or abused the property as renovated or that the problems experienced resulted from ordinary wear and tear.
30. As outlined in paragraph 17, the defects indicate that a proper repair service could not have been performed to renovate the house. The evidence further suggests that the applicant's safety was compromised due to the incompleteness of the repairs.
31. The Tribunal is persuaded that the respondent failed to provide a service in a manner and quality that persons are generally entitled to expect. Substandard materials were used, water leaks occurred after sliding doors and ceilings were installed, damp

proofing was removed and not replaced, an electricity certificate was not provided after electrical work was done, and further repairs were necessitated due to the poor services.

32. The rights afforded to consumers under the CPA are there to protect them. An infringement of those rights could have serious financial consequences for a consumer. In this case, the applicant has been financially prejudiced by spending R476 498.00 in vain and his family's safety was compromised. This undoubtedly continues to cause him a great deal of distress.
33. The Tribunal considered the consumer's expectation that the respondent would professionally deliver services. The evidence before the Tribunal reveals that the goods installed by the respondent are not free of defects. To the extent that such goods are required to perform the services, the Tribunal is persuaded that the respondent's services were not performed in a manner and quality that persons are generally entitled to expect.
34. In failing to provide its service in a manner and quality that persons are generally entitled to expect, the respondent has contravened sections 54(1)(b) and (c). These contraventions amount to prohibited conduct and are serious. The Tribunal views these contraventions in a serious light, as they have the effect of undermining the CPA, its purpose, the aggrieved consumer, and the applicant.
35. In line with section 54(2)(b), the Tribunal finds that the consumer is entitled to a refund of a reasonable portion of the price paid to the respondent. A refund of 90% of the price paid to the respondent would be suitable in this instance.

ADMINISTRATIVE FINE

36. The applicant requested the Tribunal to impose an administrative fine on the respondent. The Tribunal is satisfied that the nature of the respondent's contraventions and the consequent financial implications for the consumer justify the Tribunal imposing an administrative fine on the respondent. The kind of contraventions perpetrated by the respondent are undoubtedly the type of conduct the CPA seeks to prohibit. Once it finds the respondent has engaged in prohibited conduct, the Tribunal has a duty to exercise its powers by sending a clear and strong message to suppliers that such conduct will not be permitted.

37. Section 112(3) outlines the factors the Tribunal must consider when determining an appropriate fine. These are listed and discussed under separate sub-headings below.

The nature, duration, gravity, and extent of the contravention

The evidence shows that the contraventions are serious, disregarding the CPA and the consumer's rights. The nature and extent of the contraventions warrant serious action against the respondent.

Any loss or damage suffered as a result of the contravention

The consumer was exploited by the performance of services that were not of the quality that persons are generally entitled to expect. The renovations resulted in inconvenience and financial prejudice for the consumer.

The behaviour of the respondent

The respondent completely disregarded consumer rights and made a limited attempt to co-operate with the applicant. It took advantage of the consumer and kept his money despite its failure to remedy the defects in the quality of services performed and goods supplied. The respondent refused to refund the consumer a reasonable portion of the price paid for the services performed and goods supplied.

The market circumstances in which the contravention took place

The respondent's conduct illustrates that consumers rely on suppliers' expertise in the market where the contraventions occurred. These consumers are often not fully aware of their rights and are vulnerable to exploitation.

The level of profit derived from the contravention

The respondent benefited from the purchase price paid by the consumer.

Whether the respondent has previously been found in contravention of the CPA

No prior investigations or enforcement has been instituted against the respondent.

38. Considering the abovementioned factors, the factual evidence, and the conduct displayed, it is in the interest of justice for an administrative fine to be imposed on the respondent. The purpose of an administrative fine is, in the circumstances of this application, a punitive measure that is warranted. Section 112(2) provides that an administrative fine imposed may not exceed the greater of 10% of the respondent's annual turnover during the preceding financial year or R1 000 000.00. The applicant

did not submit evidence of the respondent's turnover. The Tribunal can, however, still impose a fine limited to a maximum of R1 000 000.00.

39. The respondent's conduct has displayed little or no regard for the spirit and purpose of the CPA.
40. The Tribunal finds that a fine of R50 000.00 is appropriate.

ORDER

41. Accordingly, the Tribunal makes the following order:
 - 41.1 The respondent has contravened sections 54(1)(b) and (c) of the CPA, read with section 54(2);
 - 41.2 The respondent's contravention of sections 54(1)(b) and (c), read with section 54(2) of the CPA, is declared prohibited conduct;
 - 41.3 The respondent is ordered to refund the consumer R420,748.20 within 20 business days of this judgment being issued;
 - 41.4 The applicant is ordered to ensure that the respondent makes the refund in paragraph 41.3.
 - 41.5 The respondent must, within 60 business days of issuing this judgment, pay an administrative fine of R50 000.00 into the National Revenue Fund referred to in section 213 of the Constitution² using the following bank account details:

Bank: Nedbank

Account holder: Department of Trade, Industry and Competition

Branch name: Telecoms and Fiscal

Branch code: 198765

Account number: 126 884 7941

Account type: Current Account

Reference: NCT/358791/2024/73(2)(b) and the name of person or business making the payment; and

² Constitution of the Republic of South Africa, Act 108 of 1996.

41.6 There is no cost order.

Dr MC Peenze
Tribunal member

Presiding Tribunal member Ms N Maseti and Tribunal member Mr S Mbhele concur.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

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national consumer tribunal