

IN THE KWAZULU NATAL CONSUMER TRIBUNAL HELD IN DURBAN

Case Number: KZNCT03/2025

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

LINDOKUHLE SANGWENI

SECOND PLAINTIFF

(Name of the Consumer)

and

WOSIYANE COLD ROOMS CC

FIRST DEFENDANT

(CK 9912767/23)

MATTHEWS BONGANI CHEMANE

SECOND DEFENDANT

Coram:

Prof B. Dumisa – Chairperson & Presiding Member

Ms N. Cawe – Member & Deputy Chairperson

Mr S Mbhele – Member

Date of Hearing – 24 April 2025

Date of Judgment – 13 May 2025

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 Plaintiffs Investigation Report was deposed to by Mrs Thandeka Makhathini, 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 **LINDOKUHLE SANGWENI**, a major male, who resides at the Church of Scotland Hospital, R33 Dundee Main Road, Tugela Ferry, in the Province of KwaZulu-Natal (hereinafter referred to as “the Second Plaintiff” or “the Consumer”).
6. The Second Plaintiff lodged his complaint against the Defendant on the 19th December 2024.
7. At the hearing, the Second Plaintiff represented himself.

DEFENDANT(S)

8. The Defendant is **WOSIYANE COLD ROOMS CC, (Reg. no: CK9912767/23)**, with its principal place of business situated at 98 Abbot Francis, Mariannhill, Pinetown, Durban, which address it has chosen as its domicilium citandi et executandi (hereinafter referred to as “the Defendant”).

9. **MR MATHEWS BONGANI CHEMANE** who said he is the owner of the Wosiyane Cold Rooms CC, the First Defendant, will automatically be joined as the Second Defendant.

APPLICATION TYPE AND ORDER SOUGHT

10. 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).
11. The Second Plaintiff sought an order against the Defendant(s) in the following manner:
- 11.1 Declaring that the Defendant(s) conduct is prohibited conduct, in contravention of Section 4 and Section 19 of the Consumer Protection Act 68 of 2008 (the “CPA”);
- 11.2 Directing the Defendant(s) to refund the Second Plaintiff owing an amount of R20 000.00 (Twenty Thousand Rand);
- 11.3 Interest on the amount referred to in 11.2 above at the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975;
- 11.4 The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled;
- 11.5 To order the Defendants to pay all the above payments within 15 days of the judgment to the Second Plaintiff Bank Account;
- 11.6 Directing the Defendants to refrain from conducting future business in a manner that amounts to prohibited conduct;
- 11.7 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.

11.8 Any further and/or alternate relief.

MATTERS TO BE DECIDED

12. The Tribunal has to decide whether:

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

12.2 The appropriate sanction to be ordered.

BACKGROUND

13. The Second Plaintiff gave the following details when he lodged his complaint against the Defendants with the First Plaintiff.

13.1 On 9 March 2024, the Second Plaintiff contacted the Defendant(s) to supply and deliver the cold-room to the Second Plaintiff;

13.2 The Defendants provided the quotation of R20 000.00 (Twenty thousand Rand) to the Second Plaintiff. The Second Plaintiff immediately paid that R20 000 in full by electronic payment at the Defendants business premises the same day;

13.3 The Defendants informed the Second Plaintiff that the Cold-room would be received the next six (6) weeks;

13.4 The Defendants failed to honour the sale agreement, as they failed to deliver the Cold-room as promised;

13.5 In around April 2024, the Second Plaintiff travelled to the Defendants business premises at his own cost, from Tugela Ferry to Durban and back, to enquire about the undelivered cold-room. It proved to be a very expensive wasteful trip, as there was no cold-room ready for him. He was instead assured that the cold-room would be delivered that week. This proved to be yet another empty promise by the Defendants to the Second Plaintiff;

- 13.6 The Second Plaintiff thereafter made several telephonic follow-ups to the Defendants; which were met with many other empty promises;
- 13.7 It was after all these empty promises by the Defendants to deliver the cold-room that the Second Plaintiff finally gave up and then requested the Defendants for a full refund of R20 000.00 already paid;
- 13.8 On the 4th of October 2024, the Second Plaintiff once again approached the Defendants seeking a refund. Mr Matthews Bongani Chemane, who introduced himself as the business owner, without necessarily providing his name, committed to repaying the amount in weekly instalments of R5000.00. They entered into and signed a agreement. This was yet another empty promise.
- 13.9 Even though we will not focus on the failed intervention of Clientele Legal on this matter; it must be noted that Clientele Legal did send a Letter of Demand per registered email, dated 20 November 2024, to the Defendants. The Defendants simply ignored this Letter of Demand.
- 13.10 The Second Plaintiff finally decided to officially lodge a formal complaint against the Defendants with the KwaZulu-Natal Consumer Protector's Office. Mrs Thandeka Makhathini was officially designated the Investigator on this matter.

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT

14. The investigator tried to mediate this matter by sending numerous letters, written reminders and even telephoned him several times. The Defendants never responded to these efforts and even stopped answering her calls;
15. It is against this background that the Second Plaintiff requested that the matter be referred to the KZN Consumer Tribunal as he believed the Defendants' conduct was tantamount to prohibited conduct.
16. In her report, the investigator, Mrs Thandeka Makhathini, concluded that the Defendants failed to comply with the Consumer Protection Act as they failed to deliver the cold-room within the agreed time frames. It was on these grounds that the investigator wrote "*Wosiyane Coldrooms has violated the Consumer*

Protection Act, this matter will be closed by the District Office and will be referred to the Consumer Tribunal for further processes of Adjudication”.

THE HEARING

17. The hearing was held on the 24th of April 2025
- 17.1 The Hearing was held at the EDTEA Offices of the KwaZulu-Natal Department of Economic Development Tourism and Environmental Affairs (EDTEA), 24th Floor, 333 Bayhouse Building, Anton Lembede Street, Durban.
- 17.2 The Defendants had not formally indicated their intention to defend the matter, and did not attend. The matter was thus held unopposed.
- 17.3 At the Hearing, the First Plaintiff and the Second Plaintiff confirmed the details of the complaint as contained under Background above;

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*

CONSIDERATION OF THE EVIDENCE BEFORE THE TRIBUNAL

20. It is not in dispute that the Defendants did not supply and deliver the cold-room as per the terms and agreement:
- 20.1 The Defendants made many promises to supply and deliver the cold-room on certain dates, but failed to deliver on each of those dates;
 - 20.2 They promised to refund the Second Plaintiff but failed to refund the Second Plaintiff all the money owing as promised.

CONSIDERATION OF THE ORDERS APPLIED FOR

21. There was a prayer for the Defendants conduct to be declared prohibited conduct in contravention of various provisions of the CPA.
- 21.1 The Defendant's conduct was in breach of Section 4(5)(a) of the CPA, when they totally failed to supply and deliver the cold-room as per terms of the sales agreement;
 - 21.2 The Defendants were in breach of Section 19(2) when they failed to refund the Second Plaintiff the R20 000.00 already paid in full for the cold-room.
22. The First Plaintiff made a prayer for the Defendants to refund the Second Plaintiff the amount of R20 000.00 (Twenty thousand Rand) being the total amount owing by the Defendants to the Second Plaintiff;

23. Directing the Defendants to pay an interest on the amount referred to in paragraph 22 at the Prime Overdraft Rate of 11.5%;
24. The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled;
25. Directing the Defendants to pay an administrative penalty of R15 000.00 (Fifteen Thousand Rand) and/or making any other appropriate order contemplated under section 4(2)(b)(ii) of the CPA.

ORDER

26. Accordingly, the Tribunal makes the following order:
27. 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;
28. The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled;
29. The Defendants, both Wosiyane Cold Rooms CC and Matthews Bongani Chemane, are jointly and severally liable, the one paying the other to be absolved and are ordered to refund the Second Plaintiff the amount of R20 000.00 (Twenty Thousand Rand) which is the amount owing to the Second Plaintiff by the Defendants for the total amount already paid upfront for the cold-room;
30. Interest be paid on the amount referred to in paragraph 29 above at the Primer Overdraft Rate of 11.5%;

31. The Defendants are ordered to pay the sum of the amounts on paragraphs 29 and 30 to the Second Plaintiff's banking account as per details below:

BANK NAME : ABSA
ACCOUNT NAME : Dr Lindokuhle Sangweni
ACCOUNT TYPE : Current
ACCOUNT NUMBER : 9309567390
BRANCH CODE : 632005

Reference: KZNCT03/2025 and name of the Person or Business Making the Payment

32. The Defendants are ordered to pay an administrative penalty of R15 000.00 (Fifteen 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 : KZNCT03/2025 and Name of Person or Business making payment

33. The total amount is payable within 15 (Fifteen) days of the date of this judgment.

34. There is no order as to costs.

DATED ON THIS 13th DAY OF MAY 2025

Prof B. Dumisa
Chairperson

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