

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

Case Number: KZNCT06/2025

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

GERRAD LUKE

SECOND PLAINTIFF

and

JADE POOLS TRADING AS SUNTIDE

SUNTIDE POOLS SERVICES (Reg. no 2020188010)

FIRST DEFENDANT

JEREMY MOONSAMY

SECOND DEFENDANT

NAMESHIKA SINGH

THIRD DEFENDANT

Coram:

Prof B. Dumisa - Chairperson & Presiding Member

Adv N Nursoo - Member

Mr S Mbhele - Member

Date of Hearing - 10 June 2025

Date of Judgment - 20 June 2025

JUDGEMENT AND REASONS

PLAINTIFFS:

FIRST PLAINTIFF

1. The First Plaintiff 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 Tereza Naude, who is presently employed within EDTEA at KwaDukuza 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 **GERRARD LUKE**, a major male, who resides in Escombe, Malvern, in the EtheKwini Metropolitan Region, 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 Defendants on 27 February 2025.
7. At the hearing, the Second Plaintiff elected to represent himself.

DEFENDANTS:

FIRST DEFENDANT

8. The First Defendant is **SUNTIDE POOL SERVICES (PTY) LTD** trading as **JADE POOLS** , (Reg. no: **K2020/188010**), with its principal place of business situated at 68 Daffadil Road , Marburg, Port Shepstone, KwaZulu-Natal, (hereinafter referred to as “the First Defendant”).

SECOND DEFENDANT

9. The Second Defendant is **JEREMY MOONSAMY** an adult male and the sole director of the First Defendant, as per the the company search profile of the First Defendant appearing on pages 42 to 43 of the indexed pages.

THIRD DEFENDANT

10. The Third Defendant is Nameshka Singh an adult female and the wife of the Second Defendant. The Third Defendant has been cited as the Second Plaintiff was directed by the Second Defendant to make payment for services into the personal bank account of the Third Defendant.

APPLICATION TYPE AND ORDER SOUGHT

11. 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).
12. The Second Plaintiff sought an order in the following terms:

- 12.1 Declaring that the First Defendant's conduct is prohibited conduct, in contravention of sections 4, 19 and section 47(3) of the Consumer Protection Act 68 of 2008 (the "CPA");
- 12.2 Directing the Defendants to refund the Second Plaintiff the amount of R70 000.00 (Seventy Thousand Rand); being the total amount paid by the Second Plaintiff to the Third Defendant.
- 12.3 Interest on the amount referred to in 12.2 above at the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975;
- 12.4 The sale agreement entered into between the Second Plaintiff and the First Defendant, and all subsequent agreements be cancelled;
- 12.5 To order the Defendants to pay all the above payments within 15 days of the judgment to the Second Plaintiff's bank account;
- 12.6 Directing the Defendants to refrain from conducting future business in a manner that amounts to prohibited conduct;
- 12.7 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;
- 12.8 Directing that the Defendant's details be listed on the Consumer Protectors register of adverse notations;
- 12.9 Directing the First Plaintiff and Second Plaintiff to open a criminal case with the South African Police Services who may then pursue criminal investigations in respect of the Second Defendant's conduct.
- 12.10 Any/ further alternative relief.

MATTERS TO BE DECIDED

13. The Tribunal has to decide whether:
 - 13.1 The Defendants breached the provisions of the Act as alleged by committing prohibited conduct; and
 - 13.2 The appropriate sanction to be ordered.

BACKGROUND

14. The Second Plaintiff contracted the First Defendant, on or about 17 October 2024 for the installation of a swimming pool at his residential property. The total contract price was agreed at R90,000, with a 70% deposit payable upfront and the balance upon completion.
15. On 21 October 2024, the Second Plaintiff paid a deposit of R70,000 into the bank account of the Third Defendant, the second defendant's wife, on the instruction of the Second Defendant.
16. Although the Second Defendant undertook to complete the work within approximately one month, however only a partial excavation was done. Subsequent efforts by the Second Plaintiff to contact the Second Defendant were unsuccessful.
17. On 25 November 2024, unknown persons arrived at the Second Plaintiff's property seeking the Second Defendant for unpaid debts, prompting the Second Plaintiff to investigate further. It then emerged that similar complaints had previously been lodged against the Second Defendant with the KwaZulu-Natal Consumer Tribunal.
18. The Second Plaintiff then filed a complaint with the KwaZulu-Natal Consumer Protector. However, the Defendants failed to cooperate with the investigation or to refund the amount paid.

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT

19. Ms Tereza Naudé, Assistant Director: Complaints Handling at the Office of the Consumer Protector (KZN), investigated the Second Plaintiff's complaint lodged on 27 February 2025.
20. In her report dated 26 March 2025, she noted that Jade Pools, previously trading as Suntide Pools, had already appeared before the KZN Tribunal in a prior matter.
21. Despite multiple attempts to contact the Second Defendant , including by telephone, WhatsApp, and email , no substantive response was received.
22. On 17 March 2025, the Second Defendant advised via WhatsApp that he would respond through his attorney, but he failed to do so by the agreed date.
23. By 26 March 2025, with no further communication forthcoming, Ms Naudé referred the matter to the KZN Consumer Tribunal for adjudication

THE HEARING

24. The hearing was held on the 10th of June 2025.
- 24.1 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.
- 24.2 The First Defendant had filed the Notice of Intention to Defend, and was in attendance of the hearing proceedings.
- 24.3 At the hearing, the First Plaintiff and the Second Plaintiff confirmed the details of the complaint as tabulated in the above-mentioned.

24.4 The Second Defendant did not challenge the evidence tendered by the Plaintiffs save to admit liability.

APPLICABLE SECTIONS OF THE CONSUMER PROTECTION ACT 68 of 2008

25. Section 4 Realisation of consumer rights

- (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.*

26. 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.*

26.1 **Section 47**
Over-selling and overbooking

Section 47(3) if a supplier makes a commitment or accepts a reservation to supply goods and services on a specified date or at a specified time and, on the date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply those goods and services, or similar or comparable goods or services of the same or better quality, class or nature the supplier must-

(a) refund to yhe consumer the amount, if any, paid in respect of that commitment or reservation, together with the interest at the prescribed rate from the date on which the amount was paid until the date of reimbursement ; and

(b) in addition, compensate the consumer for costs directly incidental to the supplier's breach of the contract, except to the extent that subsection (5) provides otherwise,

CONSIDERATION OF THE EVIDENCE BEFORE THE TRIBUNAL

27. It is incontrovertable that the Defendants did not supply and install the swimming pool as per the terms and agreement:

27.1 The Second Defendants made many empty promises to deliver services and installation of the swimming pool as per one month period agreed upon, but still failed to deliver as per their undertaking.

27.2 The Sendond Defendant promised to refund the Second Plaintiff but failed to refund all the money owing as promised.

- 27.3 The flagrant transgression of consumer rights by the Defendants is not the first of its kind as the defendants were found to have committed prohibited conduct in terms of Sections 19 and 47 of the Act in a matter where the Second Plaintiff was Abey Rasepae under case number KZNCT18/2023.
- 27.4 It is common cause that the Second Plaintiff entered into a contract in terms of which the Defendants undertook to repair the Second Plaintiff's household pool. The evidence points out that a eighty percent deposit of R70 000.00 (Seventy Thousand Rand) was paid to the Defendants, and that it would take one month for the work to be completed.
- 27.5 The Second Plaintiff had a reasonable expectation that the installation of the pool would be effected within one month period as undertaken by the Second Defendant.
- 27.6 Based on the Second Plaintiff's testimony and the absence of a version to the contrary, the Second Plaintiff's unchallenged version is accepted.
- 27.7 The Second Defendant's conduct is a complete disregard of the Second Plaintiff's rights, and such conduct is tantamount to prohibited conduct as envisaged in the "CPA."
- 27.8 The Second Defendant in this matter and the attitude displayed to the Plaintiffs during the investigation in not cooperating with the Office of the Consumer Protector by not agreeing to meet with the Second Plaintiff to amicably resolve the matter, and in not refunding the money he undertook to refund, the Tribunal is satisfied that an administrative penalty be imposed.
- 27.9 The Second Defendant's conduct has demonstrated that he has no intention to install to the Second Plaintiff household pool as agreed.

CONSIDERATION OF THE ORDERS APPLIED FOR

28. There was a prayer for the Defendant's conduct to be declared prohibited conduct in contravention of various provisions of the CPA.
 - 28.1 The Defendant's conduct was in breach of Section 4(5)(a) of the CPA, when they totally failed to deliver and install the balustrades as per terms and agreements;
 - 28.2 The defendants were in breach of Section 19(2) when they failed to deliver and install the swimming pool;
29. The First Plaintiff made a prayer for the Defendants to refund the second plaintiff the amount of R70 0000.00 being the total amount still owing by the Defendants to the Second Plaintiff;
30. Directing the Defendants to pay an interest on the amount referred to in paragraph 12 at the Prime Overdraft Rate of 11.5%;
31. The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled;
32. 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.

ANALYSIS

33. The Tribunal has considered whether the Defendants conduct constitute prohibited conduct in terms of the CPA. In doing so, the Tribunal is mindful of its wide -ranging powers to make appropriate orders concerning prohibited conduct.

34. In the present matter, the Plaintiffs argued that the defendants contravened sections 4(5), 19(2) and 47(3).
35. According to the undisputed evidence before the Tribunal, the Second Plaintiff did not receive the installation of the pool in his household. The Plaintiffs put up a convincing case by corroborating each other regarding failure by the Defendants to render contractual services which is to install pool to the Second Plaintiff household.
36. Despite the Second Plaintiff several attempts to persuade the Second Defendant to complete the work as per its undertaking, it all fell on deaf ears. The Tribunal finds that the Second Defendant showed no sympathy or understanding for the Second Plaintiff when he continued to avoid his calls and kept on making empty promises and flimsy excuses as depicted in Whattap messages.
37. The CPA aims to protect consumers from exploitation and abuse in the market place. It promotes an economic environment that supports and strengthens a culture of consumer rights and responsibilities. By failing to respect consumer's right to be refunded, the defendants have not only engaged in a prohibited conduct as defined in the CPA but also infringed on a consumer's practices to receive safe and quality service.
38. Any other factor which should, in the Tribunal's opinion, be taken into account in the interest of justice is Section 4(2) (b) of the CPA which enjoins the Tribunal or a court to promote the spirit and the purposes of the CPA. One of the declared purposes of the CPA is to protect consumers from unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and deceptive misleading, unfair or fraudulent conduct.
39. The conduct of the defendants is very serious because it disregarded various provisions of the CPA and severely prejudiced the consumer. The nature, duration, gravity and extent of the contravention and damage suffered by the second plaintiff is displayed by the complete refusal of the Second Defendant to cooperate with the Plaintiffs.

ORDER

40. Accordingly, the Tribunal makes the following order:

40.1 The Defendants are declared to have engaged in prohibited conduct in contravening section 4(5)(a), 47(3), and section 19(2)(a)(i) of the Consumer Protection Act No 68 of 2008;

40.2 The sale agreement entered into between the Second Plaintiff and the Defendants, and all subsequent agreements be cancelled;

40.3 The Defendants, both Jade Pools t/a Suntide Pools Service (Pty) Ltd and J Moonsamy, are jointly and severally liable, the one paying the other to be absolved and are ordered to refund the second plaintiff the amount of R70 0000.00 (Seventy Thousand Rand) which is the amount still owing to the second plaintiff by the defendants;

40.4 The Defendants are ordered to refrain from conducting themselves in such a manner;

40.5 Interest be paid on the amount referred to in paragraph 40.3 and 40.5 above at the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975;

41. The defendants are ordered to pay the sum of the amounts on paragraphs 29 and 30 to the Second Plaintiff's banking account within 15 days of the granting of this Order as per details below:

BANK NAME : Absa

ACCOUNT HOLDER : Mr Gerrad C Luke

ACCOUNT TYPE : Current

ACCOUNT NUMBER : 4058886080

BRANCH CODE : Cheque account

Reference: KZNCT06/2025 and name of the Person or Business Making the Payment

42. 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 : KZNCT06/2025 and Name of Person or Business
making payment

43. The total amount is payable within 15 (Fifteen) days of the date of this judgment.
44. There is no order as to costs.

DATED ON THIS 20th DAY OF JUNE 2025

Mr S. Mbhele (Member)
Judgment Writer

Prof B. Dumisa (Chairperson and Member) and Adv N. Nursoo concurred