

IN THE CONSUMER COURT FOR THE PROVINCE OF LIMPOPO
HELD AT POLOKWANE

Case Number: LCC13/09/23

In the matter between:

Mphahlele Jackina Mamiki

And

SIR AIR COOLING & HEATING

Cool Zone CC



Applicant

1st Respondent

2nd Respondent

JUDGMENT

- (1) The Applicant is **Ms Mphahlele Jackina Mamiki**, an adult female resident of Limpopo Province who is a businesswoman.
- (2) The First Respondent is **Sir Air Cooling and Heating**, a corporate entity incorporated in terms of the laws of the Republic. The First Respondent is in the business of providing air cooling and heating equipment to its client.
- (3) The Second Respondent is **Cool Zone CC**, a corporate entity incorporated in terms of the laws of the Republic.
- (4) The Applicant had approached the Consumer Court for an order in the following terms:

4.1 That the 1st Respondent refund the monies paid, being the money for the purchase of 2 air conditioners,

4.2 That in the alternative, the 2nd Respondent 'being the client of the 1st Respondent' pay the Applicant the monies in 4.1.

(5) The matter was previously before the Small Claims Court and was struck off the roll based on lack of jurisdiction.

BRIEF BACKGROUND OF FACTS

- (6) Some time in March of 2022 the Applicant approached the 1st Respondent to 'enquire about air coolers.' The Applicant required air coolers for the purpose of supporting her fresh flower business.
- (7) It is the submission of the Applicant that upon her arrival at the business premises of the 1st Respondent she found a man named Bradley whom she approached and subsequently sought advice from him relating to the cooling machines.
- (8) The Applicant further submitted that Bradely, who at all material times was working as an employee/consultant of the 1st Respondent advised her to purchase an air conditioner, an advice she accepted as '**Bradely deals with the situations every day**'.
- (9) However, as the Applicant further stated, she was unable to proceed with the purchase as she was told that the **1st Respondent did not sell to the public but sells equipment and machinery through its accredited installers**. It was at this time that the Applicant sought the help of the 2nd Respondent who at the time was an accredited installer with the 1st Respondent.



- (10) It was on the 31st March 2022 that **the Applicant went together with the 2nd Respondent to purchase the air conditioners.**
- (11) The Applicant paid a total of R15 400.00 for two air conditioners.
- (12) The purchased air conditioners were to be installed and were subsequently installed by the 2nd Respondent at the business premises of the Applicant, this was to be done in terms of an oral agreement between the Applicant and the 2nd Respondent.
- (13) The 1st Respondent was at no stage a party to the oral agreement in paragraph 12 above.
- (14) The 2nd Respondent was paid an amount of R11 750 for the installation of air conditioners by the Applicant.
- (15) The Applicant was workshopped on the functioning of the air conditioners by the 2nd Respondent.
- (16) The Air conditioners worked perfectly for a period of three weeks, emitting cold air and thus keeping the flowers alive.
- (17) However, sometimes after three weeks the air conditioners started to produce a warm air, as a result of which warm air the flowers were beginning to dry.
- (18) The 2nd Respondent was called and it was later indicated by the 2nd Respondent that there was nothing wrong with the air conditioners – the 1st Respondent further



advised the Applicant to check with the 1st Respondent as to why the air conditioners were switching to a heat mode.

(19) It was a second installer, who is equally accredited with the 1st Respondent who informed the Applicant that **they were not supposed to sell air conditioners to her but a water-cooling system.**

(20) On the advice of the second installer, the Applicant went to the 1st Respondent for a refund.

THE QUESTIONS TO BE DETERMINED

(21) Whether a contract of sale existed between the Applicant and the 1st Respondent,

(22) Whether the Applicant was justified in placing her reliance on the alleged advice of a certain Bradely who at the time worked as an employee/consultant of the 1st Respondent.

(23) The question whether the air conditioners were in their normal working condition at all material times was settled in the affirmative between the parties. The only question was whether air conditioners were a relevant system for the Applicant's business needs.

(24) Whether the 1st and 2nd Respondents should shoulder liability for the Applicant's ultimate decision to purchase air conditioners instead of water-cooling system.



ANALYSIS OF THE EVIDENCE

- (25) The Applicant insist that she purchased a wrong system on the advice of the 1st Respondent through an employee/Consultant called Bredley – the Applicant does not offer any reasonable explanation for seeking advice from a shopkeeper/employee on a subject the employee has not professed knowledge of, save to indicate that she trusted and accepted the advice because the employee was at all material times under the employ of the 1st Respondent – this clearly cannot be enough.
- (26) The Applicant insist that she was a client to the 1st Respondent, this even when she admits that she was told that the 1st Respondent does not sell goods to the public but its accredited installers, the very reason she had to contract the services of the 2nd Respondent.
- (27) The Applicant has produced, as evidence of her contractual relationship with the 1st Respondent a copy of the bank statement showing payments of monies from her account to that of the 1st Respondent – however, evidence clearly shows that the reason for payments from her account was to aid the 2nd Respondent to purchase the equipment for her later benefit.
- (28) The Applicant was ask on several occasions as to why she requesting the court to make an order of joint and several liability against the 2nd Respondent, this against the backdrop that the 2nd Respondent came into the picture for two reasons, first, to purchase the equipment from the 1st Respondent for the benefit of the Applicant, and secondly to install the equipment (air conditioners) on behalf of the Applicant.
- (28.1) Further that the Applicant admits that the 2nd Respondent assisted her to secure the purchase of specific equipment according to her specifications and that same were properly installed by the 2nd Respondent.



(28.2) In this regard the Applicant's response was that the fact that she could not get a favorable confirmatory statement from the 2nd Respondent meant that the 2nd Respondent should be joined in the claim, this is obviously strange and cannot be sustained.

(29) The Applicant was at all material times during her interaction with Bradely aware that the employee/consultant had no experience or knowledge of the flower business, all the employee did was to sell/market the sale of air conditioners and heating systems.

(30) Evidence before the court was to the effect that the said air conditioner remained in a functional state (albeit not to the desired purpose by the Applicant) until they were uninstalled by the Applicant. Differently put, there air conditioners were not faulty.

CONCLUSIONS

(31) A case of joint and several liability against the 2nd Respondent seem desperate and premised on far-fetched assumptions.

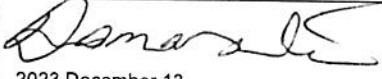
(32) The Applicant's alleged reliance on the advice by an employee was not reasonable under the canvassed circumstances. The alleged advice therefore does not in these circumstances constitute an impregnable wall of defense for the Applicant.

(33) The Applicant was made aware and was aware that she cannot directly do business with the 1st Respondent and thus she was not a client of the 1st Respondent.

In circumstances, the following order is made:

(34) **THE APPLICATION IS DISMISSED. (against both the 1st and 2nd respondents).**



Adv Ramashia RT,	Presiding.	 2023 December 13
Adv Monobe TE,	Concurring.	
Mabiletsa M,	Concurring.	

End.

