

IN THE CONSUMER AFFAIRS COURT FOR THE PROVINCE OF LIMPOPO

(HELD IN POLOKWANE).

CASE NUMBER: LCC18/01/24

In the matter between

MAHOLWANA KUTALA EMELINE

APPLICANT

And

**COUSIN CREW SOLLAR HOLDINGS (PTY) LTD
(2018/008063/07)**

RESPONDENT

JUDGEMENT

Coram:

Adv. Ramashia – Chairperson

Ms. Mabiletsa – Deputy Chairperson

Ms. Rammutla - Member

Mr. Mahlase - Member



Date of Hearing: 22 March 2024

Date of Judgement: 23 March 2024

JUDGEMENT

1. PARTIES

- 1.1. The Applicant Maholwana Kutal Emeline an adult female, is a consumer as defined in Section 1 of the Consumer Protection Act, 2008 (the CPA), who resides at Unit 5 Carlsward Meadows, Acacia Road, Midrand, Gauteng Province.

1.2. The Respondent is Cousin Crew Solar Holdings (Pty) Ltd, Registration number 2018/008063/07 a private company, duly incorporated in terms of the company laws of the Republic of South Africa.

2. JURISDICTION

- 2.1. The Consumer Court has Jurisdiction to deal with the matter as the parties concluded the contract that gave rise to this complaint within the Court's area of Jurisdiction. In addition, both parties were at the time of contracting resident within the Court's area of jurisdiction.
- 2.2. The Respondent is also carrying on business in the Court's area of Jurisdiction where the incident, which led to this Application, arose.

3. APPLICATION TYPE AND RELIEF SOUGHT

The Applicant seeks the following relief from the Court:

- 3.1. Cancellation of the settlement agreement.
- 3.2. A refund on an amount of R20 000.00 being costs incurred by Applicant to remedy Respondent's positive mal-performance after Respondent's refusal to remedy such mal-performance.

4. ISSUES TO BE DECIDED

- 4.1. The Consumer Court is required to decide whether the applicant has proved on a balance of probability that the Respondent contravened the Consumer Protection Act and is entitled to the relief sought.

5. BACKGROUND

- 5.1. During January 2023, the Applicant and the Respondent entered into a contract wherein Applicant bought a Supply and Install of Solar Package from Respondent.
- 5.2. On 18 January 2023 the Applicant paid a cash amount of **R85 000.00 (Eighty Five Thousand Rand only)** for the package and Respondent issued a receipt with Invoice dated 04 March 2023.
- 5.3. On 5 February 2023, Respondent supplied and installed the solar system at Applicant's house at 885 Green Street, P East, Thohoyandou, Limpopo Province.
- 5.4. The solar system worked well until 12 April 2023 when it stopped working. Applicant immediately and several times attempted to alert Respondent, through



the director of the Respondent Mashudu Tshisevhe about the problem, however Respondent did not respond to the calls and messages..

- 5.5. Applicant finally called a professional electrician, Mushiana Advocate Ngoho to come and diagnose the problem. His professional opinion was that the inverter burned because it did not have a surge-arrest whose function is to distribute electricity; hence, the solar system is not working. The problem will resolve by the installation of a new inverter and surge arrest to prevent a similar problem occurring in future.
- 5.6. Applicant informed Respondent about the diagnosis. Mashudu Tshisevhe promised to come the following day to replace the inverter and install the surge-arrest as advised. He did not come as promised and ignored telephone calls and messages from Applicant.
- 5.7. On 14 April 2023 Applicant bought the inverter, surge-arrest and other accessories and procured the services of Mulaudzi Project Tradings (Pty) Ltd for their installation.
- 5.8. Respondent promised to refund Applicant the cost of the inverter and for applicant to return the old inverter. Respondent failed to honour the promise but collected the inverter.
- 5.9. After Applicant reported the matter to the Consumer Protector, on 21 July 2023 Respondent entered into a settlement agreement with Applicant for the refund of the R16 500, being the cost of the new inverter. The Respondent failed to honour the settlement agreement to date.
- 5.10. Respondent has also failed to honour the subpoena served on them by the office of the Consumer Protector, hence the present application.

6. HEARING

- 6.1. This matter served before court on the 23 February 2024 and was removed from the roll for technical reasons. The Applicant was present in court and sought leave of absence from attending the hearing on a future date due to the expenses of having to travel to court. Ms Pheeha, from the office of the Consumer Protector represented the Applicant.
- 6.2. The Respondent was in default despite the application and notice of set down duly served on them by the Consumer Protector's Office representative, on 01 March 2024.
- 6.3. The Respondent's reasons for non-attendance were not communicated to the Court and the Consumer Protector confirmed that the Respondent did not furnish them with reasons for non-attendance.



- 6.4. The Applicant's case was presented through an affidavit and amongst others, the following Annexures in support of her case were handed in:
- 6.4.1 Copy of the Settlement Agreement signed by the parties on 21 July 2023.
 - 6.4.2 Proof of payment of the **R85 000.00 (EIGHTY Five Thousand Rand only)** dated 18 January 2023 ABSA Bank Transaction number 807D78FFD5-1 from Monwabisi Anthony Nabo Maholwana.
 - 6.4.3 Invoice of **R85 000.00 (Eighty Five Thousand Rand only)** dated 04 March 2023 containing the description of the goods supplied and installed, with labour included.
 - 6.4.4 Copies of receipts for the payment of the new inverter, surge-arrest, circuit breaker and distributor box dated 14 April 2023 to the amount of **R19 000.00 (Nineteen Thousand Rand only)**.
 - 6.4.5 Copies of receipts for the payment of other accessories dated 14 April 2023 to the amount of **R1 170.00 (One Thousand Rand one hundred and seventy Rand only)**.
 - 6.4.6 Copy of Invoice number 011 from Mulaudzi Project and Trading dated 14 April 2023 to the amount of **R3 500 (Three Thousand Rand only)** for solar maintenance and inverter installation.
 - 6.4.7 Copy of subpoena duly served on Respondent to appear before the consumer protector.
 - 6.4.8 Copy of Notice of Investigation by the Consumer Protector K.P Malatji duly served on Respondent on 06 October 2023.

7. ANALYSIS

- 7.1. The Applicant and the Respondents entered into a contract wherein Respondent sold, supplied and installed the solar power package to the amount of R85 000.00.
- 7.2. The Applicant duly paid the full amount of R85 000.00 and Respondent duly supplied and installed the goods.
- 7.3. The Respondent mal-performed in that they supplied and installed incomplete components, short of the surge-arrest. This resulted in the inverter burning out and thereby rendering the whole solar system non-functional.
- 7.4. The Respondent undertook to refund the cost of the inverter but failed to honour the agreement. To date they have still not refunded the money, without just cause.

8. FINDINGS

- 8.1. The Consumer Protector properly served Respondent with the Notice of Motion on the 1 February 2024.
- 8.2. Respondent failed to file notice to oppose and Answering Affidavit as stated in the Notice of Motion, and the 15 days period has lapsed.



- 8.3. The Court is satisfied that the Respondent has committed a prohibited conduct, by the contravention of section 55(2)(c) read with section 56(2) of the Consumer Protection Act no 68 of 2008. Respondent failed without just cause, to repair or replace the failed, unsafe or defective goods; and/or failed to refund to the consumer the price paid by the consumer for the defective goods.
- 8.4. The Respondent is bound to refund to the consumer the price paid by the consumer for the goods bought as replacement for the failed inverter as a result of failing to supply all the components necessary for the full and effective functioning of the solar system.

9. ORDER

Accordingly, the Court makes the following order:

- 9.1. The settlement agreement entered into between the Applicant and the Respondent on or about 21 July 2023 is hereby cancelled.
- 9.2. The Respondent is ordered, within three months of the issue of this order to refund Applicant an amount of **R16 500.00 (Sixteen Thousand Five hundred Rand only)**
- 9.3. The Respondent shall pay interest thereon at a prescribed rate (11,25%) calculated from the date of this order until the date of final payment into the Applicant's bank account.
- 9.4. No order as to costs.



Deputy Chairperson: Ms. EM Mabiletsa

Chairperson: Adv. T Ramashia, Concurring

Member: Ms N. Rammutla, Concurring

Member: Mr K. Mahlase, Concurring

