

IN THE CONSUMER AFFAIRS COURT FOR THE PROVINCE OF LIMPOPO

(HELD IN POLOKWANE).

CASE NUMBER: LLC23/02/24

In the matter between

**LIVHIMBE MAZUWO**

**APPLICANT**

And

**E.H.NATIONAL DISTRIBUTORS (PTY) LTD  
( 2013/065956/07 )**

**RESPONDENT**

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**JUDGEMENT**

Coram:

Adv. Ramashia – Chairperson

Ms. Mabiletsa – Deputy Chairperson

Ms. Rammutla - Member

Mr. Mahlase - Member



Date of Hearing: 15 March 2024

Date of Judgement: 20 March 2024

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**JUDGEMENT**

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**1. PARTIES**

1.1. The Applicant Livhimbe Mazuwo an adult male, is a consumer as defined in Section 1 of the Consumer Protection Act, 2008 (the CPA), who resides at House Number 1633 Matangari, in Vhembe District, Limpopo.

1.2. The Respondent is E.H National Distributors, Registration number 2013/065956/07 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 both the Applicant and Respondent reside in 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:

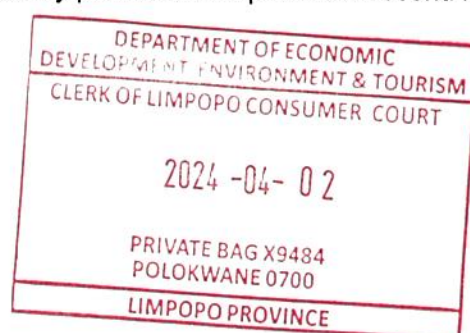
- 3.1. Cancellation of the sale contract.
- 3.2. A refund on an amount of R5 000.00 paid because of the Respondent's failure to repair or replace defective goods delivered by respondent to Applicant.

## 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 June 2022, the Applicant and the Respondent entered into a cash sale agreement wherein Applicant bought a new second-hand refrigerator in the amount of R5 000.00
- 5.2. On 30 June 2022 the Applicant paid a cash amount of **R5 000.00 (Five Thousand Rand only)** and Respondent issued a receipt with Invoice Number 9253 dated 30 June 2023 and Applicant took delivery of the refrigerator on the same day.
- 5.3. The terms and conditions of the sale agreement was that the goods were under a three months guarantee and that respondent does not issue refunds.
- 5.4. The refrigerator worked well for one week only and thereafter stopped working. Applicant informed Respondent, who advised applicant to return the fridge to the shop. Respondent replaced the original refrigerator with another one.
- 5.5. The replacement refrigerator did not work at all and applicant returned it to respondent. Respondent repeatedly promised to replace the second refrigerator but to date they have not.



- 5.6. Because of the failure by the Respondent to replace the refrigerator after twelve months since the sale agreement, Applicant visited respondent's shop in June 2023 to demand a refund.
- 5.7. Respondent refused to refund the R5 000.00 on the basis that the contract stipulates that they do not offer refunds.
- 5.8. The Applicant approached the office of the Consumer Protector for intervention, who issued subpoenas for the Respondent to attend an inquiry.
- 5.9. The Respondent failed to honour the subpoena served on them by the office of the Consumer Protector, hence the present application.

## 6. HEARING

- 6.1. The Applicant was absent from Court but was represented by Ms Pheeha, from the office of the Consumer Protector. Applicant did provide a reason for his absence by way of a letter dated 13 March 2024 due to the death and burial of his father on the 16 March 2024.
- 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 20 February 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 his case were handed in:
  - 6.4.1 Invoice number 9253 containing the description of the goods sold, amount paid **R5 000.00 (Five Thousand Rand only)** and conditions of delivery of the goods.
  - 6.4.2 Copy of subpoena duly served on Respondent to appear before the consumer protector
  - 6.4.3 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 a Code 2 Refrigerator to Applicant for R5 000.00
- 7.2. The Applicant duly paid the full amount for the refrigerator and took delivery thereof the same day.



- 7.3. The Respondent mal-performed in that they delivered to Applicant a defective refrigerator twice, after replacing the original one purchased.
- 7.4. The Respondent took back the defective goods and has to date failed or refused to replace them with a functional refrigerator.
- 7.5. Respondent refuses to refund the Applicant the amount paid for the goods.

## 8. FINDINGS

- 8.1. The Court is satisfied that the Respondent has committed a prohibited conduct, by the contravention of section 56(2)(a) and (b) read with section 55(2) and (3) of the Consumer Protection Act no 68 of 2008. Respondent failed 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.
- 8.2. The Respondent is bound by their "3 months guarantee" clause, which guarantee they violated by failing to repair, replace or offer a refund for the defective goods.
- 8.3. The 'No Refund' term is not binding on Applicant as he exercised his rights within the prescribed 6 months period of claiming a refund after Respondent failed to repair or replace the defective goods.

## 9. ORDER

Accordingly, the Court makes the following order:

- 9.1. The contract entered into between the Applicant and the Respondent on or about 30 June 2022 is hereby cancelled.
- 9.2. The Respondent is ordered, within three months of the issue of this order to pay an amount of **R5 000.00 (Five thousand 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. There is 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

