

**IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION**

Case number: **NCT/219207/2022/75(1)(b)**

In the matter between:

SWASTHI SINGH

APPLICANT

And

MASSTORES (PTY) LTD

Trading as **MAKRO**

RESPONDENT

Coram

Adv. J Simpson - Presiding Tribunal member

Prof T Woker - Tribunal member

Prof B Dumisa - Tribunal member

Date of Hearing - 23 June 2022

Date of Judgment - 27 June 2022

JUDGEMENT AND REASONS

THE PARTIES

1. The Applicant in this matter is Swasthi Singh, an adult female residing in Queensburgh, Kwa-Zulu Natal (“the Applicant” or “Ms Singh”). At the hearing, Ms Singh appeared in person.
2. The Respondent is Masstores (Pty) Ltd, trading as Makro, with its registered address at 16 Peltier Drive, Sunninghill, Sandton (“the Respondent” or “Makro”). There was no representative for the Respondent at the hearing.

APPLICATION TYPE

3. The application is in terms of Section 75(1)(b) of the Consumer Protection Act, Act 68 of 2008 (“the CPA”).
4. In a written judgment dated 19 April 2022, a member of the Tribunal granted leave for the matter to be heard by a full panel of the Tribunal. This judgment follows a hearing of the matter on the main merits.

HEARING IN DEFAULT

5. Throughout the entire history of the matter with the Tribunal, the Respondent has never filed any answering affidavit or pleading. The hearing on the leave to refer was heard on a default basis. The application was served on the Respondent by registered mail. The Registrar issued a notice of filing on 24 February 2022. The notice was sent to the Respondent by registered post and by email. On 25 May 2022, the Registrar issued a notice of set down to all the parties advising them of the hearing on 23 June 2022.
6. In terms of Rule 13 of the Rules of the Tribunal¹, the Respondent had to respond to the application within 15 business days by serving an answering affidavit on the Applicant. However, the Respondent failed to do so.
7. The Applicant did not file an application for a default order in terms of Rule 25(2).
8. The Registrar correctly set the matter down for hearing on a default basis due to the pleadings being closed.
9. Rule 13(5) provides as follows:

“Any fact or allegation in the application or referral not specifically denied or admitted in the answering affidavit, will be deemed to have been admitted.”
10. Therefore, in the absence of any answering affidavit filed by the Respondent, the Applicant’s application and all of the allegations contained therein are deemed to be admitted.

¹GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007 (Government Gazette No. 30225). As amended.

11. The Tribunal is satisfied that the application was adequately served on the Respondent. The matter proceeded on a default basis.

BACKGROUND

12. Ms Singh submits that she purchased a Fridgestar 772L Double sliding door commercial fridge from Makro Springfield on 3 June 2021 for R11 499.00. It was delivered to her home on 5 June 2021. It was still in its packaging, and she signed the delivery note accepting the item. She was told to leave the fridge for a few hours before switching it on. Later in the day, when the packaging was removed, she noticed a dent in the side of the fridge.
13. She contacted Makro the same day and reported the problem. The next day she switched the fridge on and found the light was not working, the door was not sliding properly and a sensor inside the fridge was loose. She requested a refund or a replacement of the fridge from Makro.
14. On 10 June 2021, a technician from Makro inspected the fridge and confirmed that the fridge must be returned to Makro. Twelve days later, Makro informed her that it would not replace the fridge or refund her. Makro alleged that she had damaged the fridge by dropping it. Ms Singh denies dropping the fridge or damaging it in any way. She alleges the fridge is defective and wants a refund or replacement.
15. Ms Singh attached photos of the defects in the fridge.
16. At the hearing, Ms Singh confirmed the submissions she made in her application.
17. As the matter is not opposed, Ms Singh's evidence stands uncontested. Therefore, the Tribunal accepts that the fridge was damaged and defective.

THE PROVISIONS OF THE CPA

18. Sections 55 and 56 of the CPA are relevant to the matter. Section 55 provides:

".....every consumer has a right to receive goods that—

(a) are reasonably suitable for the purposes for which they are generally intended;

(b) are of good quality, in good working order and free of any defects;

(c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and.....”

19. Section 56 provides:

“(1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.

(2) Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier’s risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either—

(a) repair or replace the failed, unsafe or defective goods; or

(b) refund to the consumer the price paid by the consumer, for the

goods. (3).....

(4) The implied warranty imposed by subsection (1), and the right to return goods set out in subsection (2), are each in addition to—

(a) any other implied warranty or condition imposed by the common law, this Act or any other public regulation; and

(b) any express warranty or condition stipulated by the producer or importer, distributor or retailer, as the case may be.”

20. Section 53(1)(a)(1) defines a “defect” as:

“(i) any material imperfection in the manufacture of the goods or components, or in performance of the services, that renders the goods or results of the service less

acceptable than persons generally would be reasonably entitled to expect in the circumstances; or

(ii) any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances;”

21. Based on the evidence presented, Makro delivered a damaged fridge to Ms Singh. She reported the damage to Makro the same day it was delivered. She could not use the fridge as intended, which constitutes a defect within the requirements of sections 55 and 56 of the CPA. The defect occurred within the six-month period as required by section 56 of the CPA.
22. Ms Singh is entitled to a refund, repair or replacement of the fridge. Ms Singh has requested a refund of the purchase price or a replacement. In the Tribunal's view, a refund is the most appropriate relief under the circumstances.

CONCLUSION

23. The Tribunal finds that the fridge she purchased was defective, and she is entitled to a refund of the purchase price.
24. Once the refund has been made to Ms Singh, the Respondent may collect the fridge at its own cost.

ORDER

25. Accordingly, the Tribunal makes the following order –
 - 25.1 The Respondent is to pay an amount of R11 499.00 to Ms Singh. The payment is to be made within 30 business days of this judgment being issued; and
 - 25.2 There is no order as to costs.

THUS DONE IN CENTURION ON THIS 27th DAY OF JUNE 2022

[signed]

Adv. J Simpson
Presiding Tribunal Member

Prof T Woker (Tribunal member) and Prof B Dumisa (Tribunal member) concurred

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

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