

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

Case Number: **NCT/245274/2022/148(1)**

In the matter between:

LIZIWE PEPETA

APPLICANT / APPELLANT

and

MITCHELL MUNCK (PTY) LTD

RESPONDENT

Coram:

Dr MC Peenze – Presiding Tribunal Member

Mr T Bailey – Tribunal Member & Executive Chairperson of the Tribunal

Adv C Sassman – Tribunal Member

Date of hearing – 9 February 2023, via Teams

APPEAL JUDGMENT AND REASONS

APPLICANT / APPELLANT

1. The Applicant in this matter is Ms Liziwe Pepeta, a major female (“the Appellant”). The Appellant is a consumer, as defined in section 1 of the Consumer Protection Act 68 of 2008 (“the CPA”).
2. At the hearing, the Appellant represented herself.

RESPONDENT

3. The Respondent is Mitchell Munck (Pty) Ltd (“the Respondent”). The Respondent is a supplier, as defined in section 1 of the CPA.
4. The Respondent did not file an answering affidavit and did not oppose the appeal application. Mr André Herholdt, the Director of the Respondent, attended the hearing as an observer.

TERMINOLOGY

5. A reference to a section in this judgment refers to a section of the CPA.

APPLICATION TYPE

6. This is an application in terms of section 148(1) of the National Credit Act No. 34 of 2005 (“the NCA”) to the National Consumer Tribunal (“The Tribunal”) to appeal the refusal by a single member of the Tribunal. The Tribunal issued a written judgment, dated 2 August 2022, wherein the single member refused the Appellant’s application for leave to refer.
7. The Tribunal has jurisdiction to hear the appeal in terms of section 27 of the NCA.
8. This judgment follows the filing of pleadings by the Appellant per Rule 26 of the Tribunal Rules¹ and the Appellant’s submissions during the hearing on 9 February 2023.

BACKGROUND

9. The Appellant lodged an application with the Tribunal in terms of section 75(1), alleging that the Respondent sold her defective goods on or about November 2018. She purchased a sheep head dehairing machine (“the machine”) from the Respondent for R27,192.42 and took possession of this machine in December 2018. According to the Appellant, the goods were not working from the date of receipt. After informing the

¹ GN 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).

Respondent of the machine's malfunctioning, the Respondent advised her to purchase a scalding tank for about R17,000 in December 2018. The scalding tank did not resolve the malfunctioning of the machine, and the Respondent allegedly advised that the wrong blades were installed. The Respondent appeared willing to replace the blades. However, when requested to pay for the transportation costs of the goods to its premises in December 2020, the Respondent refused.

10. The Appellant subsequently lodged a complaint with the Consumer Goods and Services Ombudsman and the National Consumer Commission ("the NCC"). She received a Notice of non-referral from the NCC dated 18 May 2022. On 15 June 2022, the Appellant filed her application for leave to refer with the Tribunal and served the application on the Respondent on 11 June 2022 via registered mail.
11. In the leave to refer ruling, the single member concluded that the matter is of substantial importance to the Appellant and that the general circumstances under which the Appellant purchased the machine fall within the ambit of the CPA. However, the single member confirmed that the Appellant's claim had prescribed, as the Appellant filed her leave to refer application with the Tribunal more than three years after the cause of action arose. Accordingly, the single member concluded that there is no reasonable prospect of the Tribunal being able to adjudicate the Appellant's claim. The single member, therefore, refused the application for leave to refer.

THE APPEAL

12. The Appellant motivated her appeal by submitting that the single member incorrectly based her decision on the premise that three years had lapsed since the dispute ensued. According to the Appellant, the dispute did not start in 2018 but in November 2020 when the Respondent refused to pay the transportation costs of the goods.
13. The Appellant further submitted that she has a good chance of success in the main matter and would suffer serious harm if the Tribunal does not consider her matter.

CONSIDERATION

14. The full panel must decide whether the single member made an error or misdirected herself on the law or the facts of the case. To this extent, it is useful to outline the Tribunal's authority to consider consumer complaints briefly.
15. The Tribunal derives its powers and authority from its empowering legislation. Like other similar bodies, the Tribunal only has those powers granted by its constitutive statutes and empowering legislation.² Accordingly, when considering a consumer complaint, the Tribunal must act within the limitations set by the CPA.
16. Section 116 limits the powers of the Tribunal and restricts referring a complaint to the Tribunal more than three years after the act or omission that is the cause of the complaint.³
17. In this matter, the facts are clear; the cause of action arose in December 2018 when the Appellant took possession of the machine and found it defective. Three years from December 2018 is December 2021. The application was lodged with the Tribunal on 11 June 2022.
18. Section 116 prevents the Tribunal from hearing any matter more than three years after the cause of the complaint. The High court has confirmed that the Tribunal cannot interrupt or extend the time bar.⁴ Therefore, the Tribunal does not have the authority to find that the three-year period in section 116 was interrupted while the NCC or the Consumer Goods and Services Ombudsman considered the matter. The High court's judgment binds the Tribunal. Although the judgment referred to section 166 of the NCA, section 166 is identical to section 116 of the CPA. Section 116 does not allow any discretionary element. It places an absolute bar on considering a matter older than three years.

² See De Ville J, *Judicial Review of Administrative Action* in South Africa, 2004, p. 91

³ "Section 116 Limitations of bringing action

(1) A complaint in terms of this Act may not be referred or made to the Tribunal or to a consumer court more than three years after –

a. The act or omission that is the cause of the complaint; ..."

⁴ *FirstRand Bank Ltd v Ludick A 277/2019* High Court of South Africa, Gauteng Division, Pretoria, 18 June 2020 (unreported) at para [16].

19. The Appellant's submissions on appeal do not provide any basis for the Tribunal to depart from the binding judgment by the High court. The Appellant refers to a "dispute" that arose in 2020 and subsequently concluded that the "date of dispute" is also the date the "cause of action" arose. This deduction is flawed in law.
20. The "cause of action", as referred to in clause 116, is the prohibited conduct that gives the complainant the right to seek judicial redress from the Tribunal. The "cause of action" is not the date the Appellant became unhappy with the Respondent's cooperation or when attempts to resolve the matter failed.
21. The Appellant agreed during the hearing that the alleged prohibited conduct in her complaint was the Respondent's selling of defective goods to her in 2018. Accordingly, the date on which the Appellant received the defective goods will be the date on which the cause of the action arose.
22. In terms of section 116, the Appellant had to bring her complaint to the Tribunal within three years of receiving the purchased goods, irrespective of the date on which a dispute was declared. Even if the Appellant could prove that the machine was defective or that the quality of work and components supplied by the Respondent were below standard, the Tribunal would still not have the required jurisdiction to hear the matter.
23. The Tribunal shares the Appellant's frustration with her application being barred due to the time-lapse. It is most certainly a difficult situation for consumers with legitimate claims. However, the CPA does not provide any basis for the Tribunal to ignore or extend the time bar. Applications must be lodged in time, or the legislature must see fit to grant the Tribunal the specific power to grant leave for a time-barred application.

CONCLUSION

24. The Tribunal finds no evidence that the single member erred in arriving at a decision to refuse the leave to refer application.
25. The complaint is found to be time-barred from being considered by the Tribunal. Therefore, the Tribunal concurs with the refusal order issued by the single member.

ORDER

26. Accordingly, the Tribunal makes the following order:

26.1 The application is dismissed; and

26.2 No costs order is made.

DATED ON THIS 9TH DAY OF FEBRUARY 2023.

[signed]

Dr MC Peenze

Presiding Tribunal Member

Mr T Bailey (Tribunal Member and Executive Chairperson of the Tribunal) and Adv C Sassman (Tribunal Member) concur.

