

Dispute Resolution

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SOUTH AFRICA

- Out for the count – National Consumer Tribunal knocks out claim against “Rhodes”

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A recent National Consumer Tribunal (Tribunal) ruling is a reminder that although our courts do not place over reliance on rigid technicalities, there are certain procedural defects that cannot parry knock-out blows.

In terms of the facts, Ms Madia sought compensation for pain and suffering that she claims to have suffered after consuming fruit juice out of an allegedly mouldy carton produced by RFG Foods, the manufacturer behind the Rhodes brand. Madia stated that in January 2024, she purchased a Rhodes Tropical Juice from a well-known retail store. She alleged that after drinking the juice, she noticed mould inside the carton and that she and her daughter later experienced diarrhoea and vomiting.

RFG Foods arranged for retention samples from the same production batch to be tested, which tests found the samples to be within specification without any anomalies. RFG Foods further arranged for the carton to be couriered from Gauteng to its plant in the Western Cape, however, the carton arrived too damaged for a seal integrity test to be conducted.

In light of these findings, RFG Foods denied liability but nevertheless offered Madia a R300 voucher. Unhappy with this proposal, Madia laid a complaint with the National Consumer Commission (NCC). The NCC issued a notice of non-referral, and so Madia applied to refer her complaint directly to the Tribunal.



In its judgment, the Tribunal emphasised the right to safe, good quality goods, as provided for in section 55(2) of the Consumer Protection Act 68 of 2008 (CPA), and that a producer, importer, distributor or retailer of goods is liable for any harm caused by unsafe or defective goods in terms of section 61(1) of the CPA.

However, Madia was beaten to the punch as, before the Tribunal could scrutinise the facts and the evidence (or lack thereof) behind the complaint, the application was dismissed on two procedural irregularities.

Firstly, the first respondent was cited as Rhodes Quality (Pty) Ltd, which is not an existing entity. The correct entity to have cited would have been RFG Foods (Pty) Ltd. The Tribunal held that this is a procedural irregularity which it could not correct of its own accord. Although Madia can resubmit her application to the Tribunal with the correct party, that was not the case before the Tribunal and any decision against RFG Foods in those circumstances would be inappropriate.

Secondly, even if the citation was rectified, the Tribunal would not have authority to grant the relief sought, as the Tribunal's powers are limited to those conferred by legislation, and it does not possess inherent jurisdiction to award general damages for pain and suffering. In terms of statute, the Tribunal would only have the power, in this case, to order a refund of the purchase price or a replacement of the goods. The specific process for enforcing strict liability claims under section 61 of the CPA requires a civil court to adjudicate.

The judgment is a reminder that precision from the outset, focussed on ensuring you can actually step into the ring, matters.

As Mike Tyson once said, *"everyone has a plan until they get punched in the mouth"*.

Tim Smit, Paige Winfield and Claudia Grobler



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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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