Room 301 – 306
Block B
Unity House
Victoria
Mahe
Seychelles

Tel (+248) 4- 32 52 50)
PO Box 1207
Victoria
Mahe
Seychelles

Fair Trading Commission
Seychelles

THE BOARD OF COMMISSIONERS

17th February 2021

CPA.18.095

Mr Arsene Ladouce
Mont Buxton
Mahe

ATTN: Mr Ladouce

Dear Mr Ladouce,

RE: Keven Matombe & Jerline Matombe Vs Arsene Ladouce (trading as ATL Building Contractor)- CPA.18.095

In accordance with Section 42(1) of the Fair-Trading Commission Act 2009, please find attached a signed copy of the ruling of the Board of Commissioners of the hearing conducted in the above-mentioned case. We trust in your expedient compliance as per the orders contained herein.

Also note that failure or refusal to comply with this ruling constitutes an offence under Section 53(1) of the Fair-Trading Act 2009. The same is reproduced below:

53 (1) A person which refuses or fails to comply with a direction or order of the commission commits and offence and is liable-

a) Where the person is an individual, to a fine not exceeding SCR 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both
b) Where the person is a person other than the individual to a fine not exceeding SCR 400,000 rupees

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

(Consumer Protection Act, 2010)

IN THE MATTER:

KEVEN MATOMBE & JERLINE MATOMBE
Vs
ARSENE LADOUCE
(trading as ATL Building Contractor)
EX PARTE

Case No : CPA.18.095

Complainant – Keven Matombe & Jerline Matombe
Respondent – Arsene Ladouce

QUORUM :
Mr. Victor Pool – Presiding Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner

For the Complainant
Ms. Priyanka Ramruchaya–Legal Officer (FTC)

For the Respondent
Mr Arsene Ladouce - Absent

RULING

[1] The Fair-Trading Commission (the Commission) registered a complaint from Mr. Keven Matombe & Mrs. Jerline Matombe (the complainants) (CE1) of La Gogue Mahe, on the 17th May, 2018 against one Mr. Arsene Ladouce (CE10), trading as ATL Building Contractor (the respondent) of, Mont Buxton (CE9).

[2] The gist of the complaint is that on the 17th March, 2017, the complainants and the respondent entered into an agreement to build an extension to their existing house at La Gogue (CE5). The complainants were quoted SCR 78,595 for the construction

of the foundation and SCR 99,428.92 for the construction of block works, lintels, concrete layouts above lintel and roofing (CE3).

[3] In all, the complainants had given SCR 50,000 to Mr. Ladouce in August 2017 after the agreement was made and this was done by three instalments for the construction of the foundation, and in October 2017, Mr. Ladouce received SCR 80,000 in two instalments for the block layout, lintel and roofing which amounted to SCR 130,000 in total. (CE4)

[4] On the 17th January 2018 the complainants lodged a complainant with the commission that they were experiencing water leakages from the roof extension built by the respondent (CE2). A site visit was conducted by officers from the Fair-Trading Commission on Mr. & Mrs. Matombe's property. The Officers observed the stain of rain water from the roof and along the wall of the wall facing the outside of the extension (CE14).

[5] After a very long delay and further investigation a meeting held on the 02nd august 2018, whereby Mr. Ladouce confirmed that he accepts to remedy the defects that was pointed out to him with his work on the complainant's property and he agreed to go to the complainant's site the 05th August 2018 to see what the issue was. However, as the complainants testified, he never showed up on that day (CE13).

[6] On the 06th September 2018, another site visit was conducted by the Planning Authority officers and a report was then provided by the Planning Authority officer Mr. Sayeed Salih (CE8). This report showed that the lean-to roof had not been constructed entirely per the draughtsman's design. As per the report instead of roof slopes being of a single direction (east ward) it was observed that it had been constructed facing three different directions, north, east and south. The Officer from planning observed that the north and south had not been according to approved plans. Additionally, he opined that the possible reason for leakage is that the flashing might have been poorly installed in the area where the roof and wall intersect. Planning authority stated that a lean-to roof should generally not present any threats of water leaks if installed with due care and attention. The fact that the lean-to roof by its very design is sloping, ensures that rainwater runs off quickly into guttering with no perceivable threat of water ingress and that when leaks do occur, it is due to poor installation or damaged lead flashing.

[7] On the 24th September 2018, Mr. Ladouce attended another meeting with the Fair-Trading Commission whereby he stated that they would go on site and fix the roof

where it is currently leaking and this was to be done by the 12th October 2018 (A14). The case handler contacted Mr. Ladouce on the 10th October 2018 to query as to whether he had done the necessary and Mr. Ladouce did not answer any of the calls. The complainants were called on two different occasions to see if the leak had been fixed and they confirmed that it had not been fixed.

[8] That the attempts by Fair trading commission to amicably resolve the matter had failed and to date the complainants had not been given any remedy.

[9] Given the Commission could not resolve the dispute, the case was forwarded before the Board of Commissioners for a hearing for the contravention of Section 40 (1) (b) and Section 40 (2) (b) of the Consumer Protection Act 2010, which states that: -

> *"**40(1)** Subject to this Part, where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall—*
>
> *(b) "perform the service in a manner and of a quality that persons are generally entitled to expect;"*
>
> *"**40(2)** Subject to this Part, where a supplier fails to perform service to the standards specified in subsection (1), the supplier shall at the direction of the consumer—*
>
> *(b) "refund to the consumer a reasonable portion of the price paid for the service performed, having regards to the extent of failure."*

[10] On the 11th February 2020, this case was heard before the Board of Commissioners, whereby both parties had been summoned. Mr. and Mrs. Matombe attended. The process server, Mr. Ted Camille from the Fair-Trading Commission, was called in to explain whether service was effected. Mr. Camille explained to the Board that Mr. Ladouce was served with three summons and he failed to appear on the dates he was summoned to appear. The summons was affixed at his place of residence at Mont Buxton (CE12). Mr. Camille stated that Mr. Ladouce was not cooperating and they even sought the help of the Seychelles Police (letter dated 27 August 2019 A), to try and locate his whereabouts but all attempts failed. Mr. Camille provided a written statement to these facts and pictures of service of summons.

[11] Ms. Ramruchaya, for the complainant made a motion to the Board that the case be heard Ex Parte given the considerate delays and the uncooperative conduct of Mr. Ladouce since 2018

[12] The Board having considered that several attempts had been made to serve Mr. Ladouce and it was clear that Mr. Ladouce was being invasive of service, granted the motion to proceed Ex Parte.

[13] Ms. Priyanka Ramruchaya, Legal Officer of the Fair-Trading Commission representing the complainant before the Board of Commissioners called 3 witnesses in support of the complainants' case.

[14] The first witness to be called by Ms. Ramruchaya was Mr. Keven Matombe, the complainant testified under oath that in March 2017, himself and his wife entered into an agreement with Mr. Ladouce, who was trading as ATL Building Contractor, for the construction of the extension at their existing house in La Gogue.

[15] Mr. Matombe testified that soon after the roof was installed, they experienced a lot of water trickling down from the roof along the wall of the extension done by Mr. Ladouce. He explained how he was frustrated with the respondent who gave his word to come and fix the problem but he never came.

[16] The second witness to be called by Ms. Ramruchaya, for the complainant was the Planning Authority Engineer Mr. Sayeed Salih, who testified under the oath that he visited the site and observed the works of Mr. Ladouce. He stated that there was some deviation from the approved plans but that the deviations in itself was not defective. Rather it was the way the flashing had been done that permitted water to leak under the ceiling against the wall.

[17] The third witness to be called by Ms. Ramruchaya was Ms. Ketlynn Marie. Ms. Marie in her report stated that she was an analyst from the Fair-Trading Commission and she was the case handler during this investigation. All the site visits were done by me and the investigation report also. Ms. Marie explained the findings, both of the Planning Authority and site visit reports were that Mr. Ladouce had not performed his services as to the approved plans. Ms. Marie also stated that, Mr. Ladouce did not perform his services in a manner and quality that persons are generally entitled to expect, therefore it was a breach of Section 40 (1) (b) of the CPA 2010.
After having heard Ms. Marie, Ms. Ramruchaya closed her case for the complainant.

[18] The Board took time to consider the matter. Based on the evidence adduced and the testimony of Mr. Matombe, and determined that there is a *prima facie* case made out against Mr. Ladouce.

[19] Based on all the evidence presented, the Board rules as follows:

That Mr. Arsene Ladouce refunds Mr. Keven Matombe and Mrs. Jerline Matombe, the sum of SCR 56,460.63

Given the conduct of Mr. Ladouce in this matter the Board considers a penalty under section 67 (1)(a) read with subsection (3) (c)and (f) of the Consumer Protection Act to an amount of SCR 8,000.

All payments are to be made by the respondents at the office of the Fair-Trading Commission not later than Thirty (30) calendar days from the date of the receipt of this ruling.

The parties have the right to appeal against the ruling to the Appeal Tribunal (See Section 44 of the Fair-Trading Commission Act, 2009 and Section 77 (1) of the Consumer Protection Act, 2010)

We rule accordingly.

Pronounced by us on this 17th. day of February, 2021.

Mr. Victor Pool
Commissioner
(Presiding)

Mr. Michael Nalletamby
Commissioner

Mrs. Jenna Thelermont
Commissioner