

SOUTH AFRICA / JUDGMENT

Agvision CC t/a MMA Dealership v Fayers (AR158/2023) [2025] ZAKZPHC 37 (28 March 2025) [2025] ZAKZPHC 37

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Olsen, Mathenjwa

CASE / FILE NUMBER

AR158/2023

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FLYNOTES:

CONSUMER

– Defective goods – Motor vehicle –
Consumer expressly informed that goods offered in specific condition –
Vehicle sold "as is" and as non-runner
– Purchased and driven from dealership but breaking down and requiring repairs
– Vehicle could be driven, however, consumer accepts that he can expect no more of the vehicle than would be the case if it were not running at all – Magistrates court awarding plaintiff amount of quote for repairs – Appeal upheld –
Consumer Protection Act 68 of 2008, s 55(6).
IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION,
PIETERMARITZBURG
Appeal
Case no: AR158/2023
In

the matter between: AGVISION
 CC t/a MMA DEALERSHIP
 APPELLANT
 and
 WINSTON
 MALCOLM FAYERS
 RESPONDENT

JUDGMENT

Olsen J (Mathenjwa J concurring)

[1] In May 2022 the magistrates court at Pinetown granted judgment in favour of Mr Fayers, the plaintiff in that court and the respondent here, against the appellant, AGVision CC for payment of a sum of R23 750, interest thereon, and costs on an attorney and client

scale. The defendant (I will refer to the parties as they were in the court below) appeals against that judgment. We have only heard argument from the defendant as the plaintiff abides the decision of this court on appeal.

[2] The plaintiff is a technician who was at the material time employed in Secunda. His home base was Durban, but whilst at work at Secunda he stayed there. The defendant is a motor dealer carrying on business in Pinetown. The plaintiff bought a motor vehicle from the defendant in February 2017. It broke down. The defendant refused to repair it. That lead to the plaintiff instituting action in June 2017. The trial only took place about five years later, in 2022. There were only two witnesses, the plaintiff and a Mr Govender, the salesman employed by the defendant who dealt with the transaction.

[3] The particulars of claim called upon the defendant to meet a case based squarely on the provisions of the Consumer Protection Act,

2008. Particular reference was made to section 56 of the Act, and in particular section 56(2) which permits the consumer to return goods to a supplier within 6 months after delivery “if the goods fail to satisfy the requirements and standards contemplated in section 55” of the Act. If that is done the supplier or seller of the goods must “at the direction of the consumer” either

- a) repair the goods; or
- b) replace the goods; or
- c) refund the price.

[4] The prayer at the end of the particulars of claim sought

judgment

against the defendant for

“1. Return of the motor vehicle in exchange for refund of the purchase price;

2. Repairs to the motor vehicle at the defendant’s cost;
3. Replacement of the vehicle for the equivalent vehicle in working order”.

There was no claim for attorney and client costs. The particulars of claim provided no direction from the plaintiff (as consumer) as to which of the remedies he sought, and the prior letter of demand sent by his attorney to the defendant is also devoid of any such direction.

[5] Section 69 of the Consumer Protection Act provides that the consumer may enforce any right in terms of the Act by referring the matter to the Tribunal, or referring it to an ombud, or by applying to a consumer court if there is one with jurisdiction over the matter; or by referring the matter to an alternative dispute resolution agent or filing a complaint with the commission. The last alternative is approaching a court “if all other remedies available to that person in terms of national legislation have been exhausted”. It is plain from the particulars of claim that they spoke to the enforcement of a right in terms of the Consumer Protection Act. With reference to *Joroy 4440 CC v Potgieter N.O.* 2016 (3) SA 465 (FB), *Nzwana v Dukes Motors*

[2019] ZAECHGHC 81 (3 September 2019) and *Motus Corporation (Pty) Limited v Wentzel*

[2021] 3 All SA 98 (SCA), Mr Mizrachi, who appeared for the defendant, has argued that as the plaintiff had neither pleaded nor proved pursuit of his remedy under the Consumer Protection Act through the bodies specifically provided for in the Act for the resolution of such disputes, he had no right to approach the court as “all other remedies available [to the plaintiff] in terms of national legislation” had not been exhausted. That argument is certainly supported by the cases of *Joroy* and *Nzwana*. Whether the line taken in those cases was correct was left open by the Supreme Court of Appeal in *Motus*. As there is a more prosaic route to the decision of this appeal, we find it unnecessary to make a contribution to the debate over the proper construction of s 69 of the Consumer Protection Act.

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