

SOUTH AFRICA / JUDGMENT

Bokaba v Muzdalifah Investment CC trading as Bargain Motors (Pristine Motors) (NCT/326277/2024/75(1)(b)) [2025] ZANCT 22 (8 April 2025)

[2025] ZANCT 22

COURT

National Consumer Tribunal

BEFORE

A Potwana, S Mbhele, C Sassman

CASE / FILE NUMBER

NCT/326277/2024/75(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/326277/2024/75(1)(b)

In the matter between: THABO ISHMAEL BOKABA APPLICANT and MUZDALIFAH INVESTMENT
CC RESPONDENT TRADING AS BARGAIN MOTORS (PRISTINE MOTORS)

Coram:

Dr A Potwana - Presiding Tribunal Member

Mr S Mbhele - Tribunal Member

Adv C Sassman

- Tribunal Member

Date of Hearing

- 7 April 2025

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is Thabo Ishmael Bokaba, a consumer as defined in section 1 of the Consumer Protection Act 68 of 2008 (the CPA). During the hearing, the applicant was represented by his attorney, Mr Vincent Mukwevho (Mr Mukwevho).

2. The respondent is Muzdalifah Investment CC, trading as Bargain Motors (Pristine Motors), a supplier as defined in section 1 of the CPA. During the hearing, a legal advisor from SEESA (Pty) Ltd, Mr Wessel Herbst (Mr Herbst), represented the respondent.

JURISDICTION

3. Section 27(a) of the National Credit Act 34 of 2005 (NCA) empowers the Tribunal to adjudicate this matter.

ISSUE TO BE DECIDED

4. The Tribunal must determine whether it should cancel the purchase agreement between the parties, order the respondent to pay all the expenses incurred by the applicant and issue a letter to Standard Bank Limited for the applicant's adverse listing with credit bureaus to be cleared.

INTRODUCTION

5. On 26 April 2024, the applicant delivered an application for leave to refer a complaint to the Tribunal in terms of section 75(1)(b) of the CPA and a condonation application for the late filing of the leave application.[1] On 4 September 2024, the Tribunal's Registrar (the Registrar) issued the Tribunal's ruling granting condonation. In "Part D: Order sought from the Tribunal" of the prescribed form for Form TI.73(3) & 75(1)(b) & (2) CPA, the applicant stated that if leave to refer is granted, he would seek an order rescinding the purchase agreement he entered into with the respondent, a cancellation letter from the respondent to Standard Bank Limited so that the credit bureau can clear his name, and payment of all expenses he incurred since he purchased the car. The Tribunal granted leave.

FACTS

6. The applicant alleges that on 7 April 2022, he collected a vehicle he bought from the respondent. On 8 April 2022, he discovered a funny sound coming from the back wheel. On 11 April 2022, he requested a cancellation of the purchase agreement because the vehicle was not in good condition. The respondent refused to cancel the purchase agreement. Instead, it offered to check or repair whatever the applicant was not happy with and offered the applicant a courtesy car.
7. After a few days, the respondent returned the vehicle to the applicant, but the applicant was still unhappy with the vehicle's condition. On 20 April 2022, the applicant booked the vehicle for an 80- point diagnosis. The diagnosis report confirmed that most parts were replaced with "piracy" parts and not originals. On 21 April 2022, the applicant presented the report to the respondent and asked for a cancellation of the purchase agreement once again. Once again, the respondent refused. The applicant left the vehicle and its keys with the respondent.

8. After the respondent failed to respond to emails from the applicant's lawyer, the applicant filed a complaint with the Motor Industry Ombudsman of South Africa. Thereafter, the respondent took the vehicle for an 80-point diagnosis and presented a report to the Ombudsman. The report stated that there was no problem with the vehicle.
9. The respondent admits that the applicant initially requested a cancellation of the purchase agreement on 11 April 2022 but accepted the respondent's offer to repair the vehicle. The respondent repaired and replaced some parts. It submits that none of the identified faults constituted a defect as defined under section 53 of the CPA. These were the right rear spring, steering hooter pad, right front pillar cover, shock mountings, mirror sensor, and plastic cover under the vehicle's right side. It claims the replacement parts were purchased from Goldwagen or a similar company and complied with section 55(2) of the CPA. It denies that the parts were pirated and claims that the repairs were cosmetic.
10. After the repairs, the respondent requested Dekra to perform an 80-point diagnosis. The report confirmed that the vehicle was in good working order and without defects. The respondent argues that it complied with the applicant's request to repair the vehicle as prescribed under section 56(2) of the CPA. It submits that the vehicle is not defective and complies with the requirements

of section 55 of the CPA.

11. Regarding the relief sought by the applicant under the Consumer Affairs (Unfair Business Practices) Act 71 of 1988, the respondent argues that the CPA repealed this legislation. It denies being responsible for the applicant's adverse credit listing. The vehicle was kept at the respondent's warehouse. However, on 1 October 2024, the Deputy Sheriff of Vereeniging executed a warrant for the delivery of goods. According to the warrant, default judgment was granted against the applicant, the agreement between the applicant and the respondent was cancelled, and the Deputy Sheriff was authorised to attach and remove the vehicle. The respondent duly complied with the warrant and handed the vehicle to the Deputy Sheriff. It prays for the applicant's application to be dismissed.
12. In his replying affidavit, the applicant denies various averments made by the respondent in its answering affidavit and avers that the respondent should pay the shortfall after the auction.

The respondent's technical legal points

13. During the hearing, Mr Herbst raised two legal points. The first is that the Tribunal does not have locus standi to adjudicate the complaint. This point is misconceived. The Tribunal is not a party to the dispute between the applicant and the respondent. It is an independent and impartial arbiter empowered to adjudicate applications that may be made to it.[2] Therefore, this point has no merit and is dismissed.

14. The respondent's second legal point is that there are pending proceedings between the parties before the High Court. This point is premised on the legal proceedings instituted by Standard Bank Limited against the applicant in the High Court of South Africa (Gauteng Local Division, Johannesburg). This point is also misconceived. First, in its own answering affidavit, the respondent stated that default judgment was granted against the applicant, and a warrant for the delivery of goods was issued. Thus, there is no pending litigation between the parties. Second, the respondent was not a party to these legal proceedings. Third, the legal proceedings instituted by Standard Bank Limited against the applicant in the High Court of South Africa (Gauteng Local Division,

Johannesburg) were not based on the same cause of action instituted by the applicant before the Tribunal. In the High Court proceedings,

Standard Bank Limited enforced debt payment. In these proceedings, the applicant alleges that the respondent violated his CPA rights.

Therefore, this point also has no merit and is accordingly dismissed.

RELEVANT STATUTORY PROVISIONS

15. Section 55(2) of the CPA states-

"Except to the extent contemplated in subsection (6), 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
- (d) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation."

16. Section 56(2) of the CPA states-

"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."

ANALYSIS

17. During the hearing, Mr Mukwevho submitted that the only defect that remained after the respondent repaired the vehicle was the noise. As stated above, in its answering affidavit, the respondent claims that it requested Dekra to perform an 80-point diagnosis. The report confirmed that the vehicle was in good working order and without defects. It claims it complied with the applicant's request to repair the vehicle as prescribed under section 56(2) of the CPA. It submits that the vehicle is not defective and complies with the requirements of section 55 of the CPA. In *National Director of Public Prosecutions v Zuma*,^[4] Harms DP stated –

“It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.”

In this matter, we find no basis to conclude that the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that we would be justified in rejecting them merely on the papers.

18. In *Motus Corporation (Pty) Ltd and Another v Wentzel*,^[5] (Motus) writing the unanimous decision of the Supreme Court of Appeal (SCA), Zondi JA stated that not every rattle or unfamiliar noise is a defect under the CPA and that not every defect entitles a purchaser to return a motor vehicle and demand a refund.
19. During the hearing, Mr Mukwevhu argued that the Tribunal should order the respondent to pay the auction shortfall. He could not, however, present a legal basis for the request. Similarly, the applicant's request that the respondent be ordered to pay all the expenses he incurred since he purchased the vehicle and issue a letter to Standard Bank Limited for the applicant's adverse listing with credit bureaus to be cleared has no basis in law and fact. First, the respondent was not a party to the loan agreement between the applicant and Standard Bank Limited, the High Court proceedings, and the ensuing auction. In addition, section 2(d) of the CPA unequivocally states that the CPA does not apply to “any transaction that constitutes a credit agreement under the National Credit Act, but the goods or services that are the subject of the credit agreement are not excluded from the ambit of this Act.” Accordingly, the Tribunal cannot make the orders requested by the applicant.

CONCLUSION

20. In view of the contradictory evidence presented to us by the parties and the Plascon-Evans rule, we are not satisfied that the vehicle was still defective after the respondent conducted the repairs. Even if the vehicle still made a noise, given the dicta laid down by the SCA in *Motus*, we are not convinced that the noise that might have remained after the respondent repaired the vehicle constitutes a defect that

entitles the applicant to a cancellation of the purchase agreement and a refund.

21. As stated above, there is no basis, in fact and law, for us to order the respondent to pay the auction shortfall and all the expenses incurred by the applicant and issue a letter to Standard Bank Limited so that the applicant's adverse listing with credit bureaus can be cleared.

ORDER

22. The Tribunal makes the following order:

22.1. The application is dismissed.

22.2. No order as to costs.

Thus, done and dated 8 April 2025.

Dr A Potwana

Presiding Tribunal Member

Tribunal Members Mr S Mbhele and Adv C Sassman concur.

[1] Section 75(1)(b) of the CPA states that "If the Commission issues a notice of non-referral in response to a complaint, other than on the grounds contemplated in section 116, the complainant concerned may refer the matter directly to the Tribunal, with leave of the Tribunal."

[2] Section 27(a)(i) of the NCA.

[3] Section 1 of the CPA.

[4] (573/08)

[2009] ZASCA 1 (12 Jan 2009) at para 26.

[5] (Case no 1272/2019) [2021] ZASCA 40 (13 April 2021) at para 41.

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