

SOUTH AFRICA / JUDGMENT

Carstens v Beukes and Others (NCT/133281/2019/75(1)(b)) [2020] ZANCT 20 (24 September 2020) [2020] ZANCT 20

COURT

National Consumer Tribunal

BEFORE

H Alwar

CASE / FILE NUMBER

NCT/133281/2019/75(1)(b)

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

number: NCT/133281/2019/75(1)(b)
In

the matter between: MICHELLE
LYN
CARSTENS APPLICANT
and
BRADLEY
BEUKES 1ST
RESPONDENT
MR
BEU QUALITY TRADERS (PTY) LTD T/A QUALITY AUTO 2ND
RESPONDENT
AUTO
UNIQUE MOTORS (PTY)
LTD 3RD
RESPONDENT

Coram: Ms.
H Alwar - Presiding Member
Date
of hearing: 18
September 2020
Last

date documents received
for adjudication: 23 September 2020
Date
of judgment: 24
September 2020

JUDGMENT

AND REASONS

THE PARTIES

1. The Applicant is Michelle Lyn Carstens, an adult female (“the Applicant”).
2. The First Respondent is Bradley Beukes, an adult male whose physical address is [...], Wonderboom, Gauteng (“First Respondent”).
3. The Second Respondent is Mr Beu Quality Traders (Pty) Ltd, a private company that is duly incorporated and registered in terms of the company laws of the Republic of South Africa and trading as Quality Auto (“Second Respondent”). The Second Respondent’s registered business address is Rietbok Street, Kathu, Northern Cape.
4. The Third Respondent is Auto Unique Motors (Pty) Ltd, a private company that is duly incorporated and registered in terms of the company laws of the Republic of South Africa with its registered address at 90 Botha Avenue, Lyttleton Manor, Centurion, Gauteng.
5. Collectively, the First; Second and Third Respondents will be referred to as (“The Respondents”).

THE APPLICATION

6. This is an application by the Applicant for leave to refer her complaint, which was non-referred by the National Consumer Commission (the “NCC” or “Commission”), directly to the National Consumer Tribunal (the “Tribunal”) in terms of section 75(1)(b) of the Consumer Protection Act, 2008 (the “CPA”).
7. In an application of this nature, the Tribunal must first consider whether it will grant the Applicant leave to hear the matter. If leave is granted, then the Tribunal will consider the merits of the application.
8. The Respondents did not oppose this matter, nor did any of the Respondents appear at the hearing. The Tribunal was satisfied that the service requirements in terms of Rule 30(1)(b) were met. The Applicant served the application on the Respondents via registered mail. At the hearing, the Applicant also handed up the track and trace report confirming that the application was delivered to the First Respondent. On the date of the hearing, the Presiding Tribunal member was satisfied that the notice of set down was adequately served on the Respondent, and the matter proceeded on a default basis.

BACKGROUND

9. During September 2016, the Applicant purchased a VW Polo 2013 model from Second Respondent. During a period of approximately 3 (three) months, the Applicant heard a knocking sound on the right front wheel of the vehicle. She informed the Second Respondent of the problem experienced with the vehicle. The Second Respondent arranged for the vehicle to be repaired, and the vehicle was returned to the Applicant.
10. On 16 April 2018, the Applicant experienced problems with the disk pads and brakes of the vehicle. She took the vehicle to VW Stellenbosch to be repaired. VW Stellenbosch repaired the vehicle but noticed other defects with the vehicle. According to the Applicant, she received a report from VW Stellenbosch confirming that the ABS braking system was malfunctioning and that the car vehicle did not have any airbags.
11. The Applicant filed a complaint with the Motor Industry Ombudsman of South Africa (“MIOSA”). MIOSA informed the Applicant that it did not receive any response from the Respondents.
12. The Applicant approached the Tribunal after receiving a notice of non-referral from the NCC, on 29 April 2019. The basis for the non-referral was that the redress sought by the Applicant could not be provided in terms of the CPA. Subsequently, the matter was set down for the hearing of an application in terms of Section 75(1)(b) of the Act.

THE HEARING

13. A hearing was convened for and held on 18 September 2020 via zoom. The Applicant represented herself.
14. According to the Applicant, she cited Bradley Beukes as the First Respondent as he is the owner of Mr Bue Quality Traders (Pty) Ltd t/a Quality Auto (Second Respondent). She paid a deposit of R55 000 (fifty- five thousand) rand into the personal bank account of the First Respondent when she purchased the vehicle. She submitted that the First Respondent might have closed down his business Mr Bue Quality Traders (Pty) Ltd t/a as Quality Auto and opened up another business Auto Unique Motors (Pty) Ltd. She, therefore, cited the new business as the Third Respondent.
15. The Applicant explained her case and detailed her reasons for the allegations of having purchased a defective and unsafe vehicle and alleged contraventions of the Consumer Protection Act. In particular, she submitted that the matter was of grave importance to her and that she wants the First Respondent to repay her the deposit that she had paid directly to him.

CONSIDERATION OF THE MERITS OF THE APPLICATION FOR LEAVE

16. The Tribunal set out the factors that must be evaluated in order to ascertain whether to grant leave in *Coertze and Burger v Young*. [1] In that case, which has been referred to by the Tribunal in a number of other decisions,[2] the Tribunal held that the following two factors should be considered:
 - (1) The Applicant's reasonable prospects of success with the referral; and
 - (2) Whether the matter is of substantial importance to the Applicant or the Respondent.
17. It is firstly clear that the matter is of substantial importance to the Applicant. She had gone to a great deal of effort to attempt to resolve the matter with the Respondent, to lodge the complaint with the MIOSA, the NCC, and to pursue it further with the Tribunal. She purchased a vehicle that she alleges was unsafe for her use as it did not have airbags.
18. The Applicant had identified a number of sections in the CPA, which she argued are relevant to her matter. Section 55 and 56 were identified as being relevant in this particular matter.
19. 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.”

20. Section 56 of the CPA states-

“(1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control of the producer or importer, a distributor or the retailer, as the case may be.

- (2) 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.”

21. Section 55 provides that a consumer is entitled to receive goods that are in good working order and free of defects. The Applicant alleged that the report from VW Stellenbosch confirms that the vehicle was defective in that the braking system was malfunctioning, and the vehicle did not have airbags. According to the Applicant, the vehicle is no longer in her possession. She returned the vehicle, and her outstanding financial debt on the vehicle was settled. However, she wants to be refunded the deposit of R55 000 (fifty-five thousand) rands that was paid to the First Respondent.

22. In considering the reasonable prospects of success, the Tribunal finds that while the Applicant’s allegations of a defective vehicle fall within the ambit of the CPA, the time period in which this alleged defect came to her attention was after the 6(six) month period in terms of the CPA. Section 56(2) places a time limit within which the consumer can return a defective vehicle and request a refund, repair, or replacement of the vehicle. It was only after 2 (two) years that the Applicant became aware that the vehicle did not have airbags and that the braking system had a malfunction. The Tribunal also notes that the Applicant returned the vehicle, and her outstanding financial debt on the vehicle was settled. However, the remaining R55 000 (fifty-five thousand)

rand deposit, which she paid directly to the First Respondent, was not refunded. This would amount to a claim of damages, which the Tribunal does not have jurisdiction to award.

ORDER

23. Accordingly, the Tribunal makes the following order:

23.1. The Applicant’s application for leave to refer the matter directly to the Tribunal is refused; and

23.2. No order is made as to costs.

Dated at Centurion on this 24th day of September 2020

[Signed]

MS. H ALWAR

PRESIDING MEMBER

[1] NCT/7142/2012/75(1)(b)&(2).

[2] See also Mbekeni v Freeway Toyota (NCT/36177/2015/75(1)(b) [2016] ZANCT 18 (1 April 2016) and Papo v Standard Bank of South Africa Ltd (NCT/69527/2016/14

[2017] ZANCT 81 (27 July 2017).

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