

SOUTH AFRICA / JUDGMENT

Du Toit v Engines for Africa (Denver) (Pty) Ltd (NCT/343426/2024/75(1)(b)) [2025] ZANCT 10 (31 January 2025) [2025] ZANCT 10

COURT

National Consumer Tribunal

BEFORE

S Hockey, A Potwana, P Manzi-Ntshingila

CASE / FILE NUMBER

NCT/343426/2024/75(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case No: NCT/343426/2024/75(1)(b)

In the matter between: MARIANCA DU TOIT APPLICANT and ENGINES FOR AFRICA (DENVER)
(PTY) LTD RESPONDENT

Coram:

Mr S Hockey

- Presiding Tribunal member

Dr A Potwana - Tribunal member

Ms P Manzi-Ntshingila - Tribunal member

Date of the hearing - 21 January 2025

Date of

judgment

- 31 January 2025

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is Marianca du Toit (the applicant), a consumer as defined in section 1 of the Consumer Protection Act, 2008 (the CPA)[1]. At the hearing of this matter, the applicant represented herself.
2. The respondent is Engines for Africa (Denver) (Pty) Ltd (the respondent), a company incorporated under the company laws of South Africa and a supplier as defined in section 1 of the CPA. The respondent did not file an answering affidavit, but at the hearing, Mr Ryno Myburg, the respondent's accountant, and Mr Herman Muller, its operations manager, appeared on its behalf.

APPLICATION TYPE AND JURISDICTION

3. The applicant previously referred her complaint to the National Consumer Commission (the NCC), which, after an assessment thereof, concluded on 17 July 2024 that the redress sought by the applicant could not be provided in terms of the CPA.
4. Thereafter, the applicant referred this matter to the National Consumer Tribunal (the Tribunal) in terms of section 75(1)(b). This section provides that if the NCC issued a notice of non-referral as it did in the present matter, the complainant may refer the matter directly to the Tribunal, with leave of the Tribunal. The Tribunal granted such leave on 23 October 2024.
5. Accordingly, the Tribunal has jurisdiction in terms of section 73(2)(b) and section 27(a)(ii)[2] of the National Credit Act 34 of 2005 (the NCA).

BACKGROUND

6. Before dealing with the background to this matter, it is worth noting that rule 13(5) of the Tribunal's rules provides that any fact or allegation in an application or referral not specifically denied or admitted in an answering affidavit will be deemed to be admitted. The respondent failed to file an answering affidavit, and the allegations made by the applicant, therefore, must be deemed to be admitted.
7. On 18 April 2023, the applicant bought an imported engine from the respondent for R24 500.00 and had it couriered to German Motors in Bloemfontein.
8. The engine failed a compression test conducted by German Motors, and the applicant returned the engine to the respondent on 6 May 2023.
2023. The respondent replaced the engine with a similar engine (the second engine).
9. The second engine was installed into the applicant's vehicle by German Motors on 18 May 2023, with all the respondent's installation requirements being met. However, when the vehicle was taken for a test drive, it was discovered that the turbo, according to the applicant, "was not boosting and was sucking oil into the pipes which dripped out of the engine and the engine had excessive breathing".

10. The applicant contacted the respondent and spoke to the respondent's representative, known as "JP". She also sent JP a video showing white smoke from the exhaust and oil dripping from the engine.
11. On 19 May 2023, the applicant and her husband called JP, who advised them that a faulty turbo caused the white smoke. The applicant told JP she was uncomfortable with the engine, especially because of the breathing problem, and wanted a refund. JP responded that he would speak to his boss about the matter.
12. The applicant followed up with JP numerous times, but the latter failed to provide her with feedback. As a result, on 30 May 2023, the applicant sent a letter of demand to JP, demanding a refund of the R24 500.00 she paid for the engine in terms of sections 55 and 56(2)(b). She also claimed the costs she incurred due to the faulty engine. Thereafter, she referred her complaint to the Motor Industry Ombudsman of South Africa (MIOSA).
13. On 24 June 2023, Mr Mark Botes, who identified himself as a director of the respondent, contacted the applicant's husband, but the applicant was unsure whether it was proper for the parties to communicate outside of the MIOSA process.
14. The second engine was initially stored at the premises of German Motors, but the applicant collected the engine from them as it had to be returned to the respondent. The engine was disassembled, but the applicant had it assembled.

THE RELEVANT LEGAL PROVISIONS

15. Section 55(2)(a) to (c) provides:

"Except to the extent contemplated in subsection (6)[3], 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".
16. In terms of section 56(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 sections 55, and the supplier must, at the direction of the consumer, either repair or replace the failed, unsafe or defective goods or refund to the consumer the price paid by the consumer for the goods.
17. Section 53, where a "defect" is defined, is also relevant. Section 53(1)(a) defines defect when used with respect to any goods, component of any goods or service, as –

“(i) any material imperfection in the manufacture of goods or component, or in performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or

(ii) any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances.”

DISCUSSION

18. The second engine was not reasonably suited for the purpose it was suited. The respondent admitted that it had a defective turbo. It also leaked oil and had a breathing problem, as described by the applicant.
19. In the circumstances, the Tribunal agrees that the applicant is entitled to a refund of the purchase price for the engine in terms of section 56(2), read with sections 55 and 53. By refusing the refund, the respondent contravened the aforesaid section 56(2), which amounts to prohibited conduct[4].
20. The applicant incurred costs for transporting the first engine when it was returned to the respondent and for transporting the second engine from the respondent's premises to German Motors in Bloemfontein. In addition, she incurred the costs of German Motors for the installation and removal of the second engine. She asks for compensation for these costs but accepted during the hearing that it is not within the Tribunal's authority to order payments of such costs, which amount to damages. She may, however institute civil action in a court for the recovery of damages in this regard. To assist her in recovering damages, the applicant may apply for a certificate from the chairperson of the Tribunal in terms of section 115(2).

THE ORDER

21. In the result, the following order is made:
 - 21.1. The respondent contravened section 56(2) read with sections 55(2) and 53 by refusing to refund the applicant the purchase price she paid for the defective second engine.
 - 21.2. The above contravention is hereby declared to be prohibited conduct.
 - 21.3. The parties shall arrange for the second engine to be returned to the respondent, at the respondent's costs, within 5 days of the issuance of this order.
 - 21.4. The respondent shall refund the applicant the R24 500.00 the latter paid for the defective second engine within 5 days of the issuance of this order.
 - 21.5. There is no order as to costs.

S Hockey

(Presiding Tribunal member)

Tribunal members Dr A Potwana and Ms P Manzi-Ntshingila concur.

- [1] Any reference to a section in this judgment will be a reference to a section of the CPA.
- [2] This section provides that the Tribunal or a member of the Tribunal acting alone in accordance with the NCA or the CPA may adjudicate in relation to any allegations of prohibited conduct.
- [3] Subsection
- (6) excludes subsection 2(a) and (b) to a transaction if the consumer has been expressly informed that particular cultural a specific condition and has expressly agreed to accept the goods in that condition or knowingly acted in a manner consistent with the exception the coaching the condition.
- [4] Prohibited conduct id defined in section 1 as an act or omission in contravention of the CPA.

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