

SOUTH AFRICA / JUDGMENT

Gwabeni v Wesbank, a Division of Firststrand Bank Limited (NCT/277103/2023/141(1)(b))

[2024] ZANCT 2 (2 February 2024)

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COURT

National Consumer Tribunal

BEFORE

P Manzi-Ntshingila, A Potwana, C Sassman

CASE / FILE NUMBER

NCT/277103/2023/141(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/277103/2023/141(1)(b)

In the matter between:

MXOLISI MICHAEL GWABENI

APPLICANT

and

WESBANK, A DIVISION OF FIRSTRAND BANK LIMITED RESPONDENT

Coram:

MS P Manzi-Ntshingila - Presiding Tribunal member Dr A Potwana - Tribunal member

Adv C Sassman - Tribunal member

Date of hearing - 30 January 2024

Date of judgment - 2 February 2024

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is Mxolisi Michael Gwabeni (the applicant). The applicant is a consumer, as defined in section 1 of the National Credit Act 34 of 2005 (NCA). At the hearing, the applicant represented himself.

2. The respondent is Wesbank, a division of FirstRand Bank Limited (the respondent). The respondent is a registered credit provider, as defined in section 1 of the NCA.
3. The respondent has not opposed this application, nor was it represented at the hearing. The Tribunal was satisfied that the application had been properly served on the respondent.

TERMINOLOGY

4. A reference to a section in this judgment refers to a section of the NCA.
5. A reference to a rule in this judgment refers to the Rules of the Tribunal[1].

APPLICATION TYPE

6. This is an unopposed application in terms of section 141(1)(b), in which the applicant, with leave granted by the Tribunal, seeks redress against the respondent. The applicant alleges that the respondent included inflated amounts in his credit agreement, which he only became aware of after signing it, and seeks an order for his credit agreement to be amended accordingly.

BACKGROUND

7. In August 2019, the applicant purchased a GWM Steed 6 vehicle from Haval Hatfield, Pretoria (Haval), and the respondent financed the vehicle. The applicant states that he found the vehicle difficult to drive and decided to trade it for a smaller vehicle from Haval. On 26 June 2020, the applicant received an email from Haval quoting certain amounts for the settlement of his first credit agreement with the respondent and for the sale of a new Haval H1 vehicle, which he accepted. On 2 July 2020, an employee from Haval delivered the new vehicle and presented him with a stack of papers to sign on the car's boot. The applicant alleges that the documents included an invoice from Haval, a settlement agreement for the old vehicle, and a new credit agreement. The employee from Haval directed him to where he was required to sign, and he signed the documents accordingly. The applicant avers that he was overcharged with an amount of R25 576.60 for additional items he was unaware of and charged twice for a licence fee. This overcharging resulted in an inflated sale price for the new vehicle, which appears on the credit agreement he signed. The inflated amount is accruing interest and is causing him financial prejudice. The applicant seeks an order for the credit agreement to be amended accordingly.

THE APPLICANT'S

SUBMISSIONS

8. The applicant submitted that an email from Haval dated 26 June 2020 shows the cost of the vehicle being R192 900.00, whereas the price indicated on the invoice from Haval shows the cost of the vehicle being R194 078.26. The email further states that smash- and-grab safety film will be included at no extra charge. However, the invoice shows that he was charged an amount of R6 956.52 under the heading Pre-Tax Items, for the safety film and a "New PDI"

fee, which he does not understand. The invoice also lists an amount of R16 356.53 under the heading “Accessories”, to which he did not consent.

9. The applicant further submitted that the respondent provided him with two different settlement values for the first credit agreement. The one figure provided on 10 June 2020, was R306 014,72, and another figure of R301 485.54 was provided on 1 July 2020. The figure had decreased by the time the agreement was settled, but Haval still included the initial settlement figure on its invoice. It was only after he brought it to their attention that Haval agreed, in an email dated 17 July 2020, to refund him the difference between the two amounts.
10. The applicant maintains that he was charged R1 500.00, twice for a licence fee. He submits that the National Credit Regulator, in its notice of non-referral, made a mistake in finding that the fee was not included twice since it was included in Haval’s invoice and then added again by the respondent.
11. The applicant avers that the respondent treated him unfairly and that he was robbed of his rights. He trusted Haval’s employee and the respondent when he was told where to sign. He understood that he was entering into a credit agreement with the respondent and did not dispute the total figure for the purchase of the vehicle as it appeared on the credit agreement. He only became aware of the discrepancies in amounts afterward when he received copies of the documents from the respondent.
12. The applicant seeks an order for his credit agreement to be amended by correcting the figures that have been inflated to reduce the amount of credit he is indebted to the respondent.

CONSIDERATION OF THE EVIDENCE

13. The Tribunal is seized only with the applicant’s documentary evidence and oral arguments. The respondent, by failing to file an answering affidavit and appear at the hearing, has lost the opportunity to put a proper defence against the allegations levelled

against it and has placed itself in the hands of the Tribunal.

14. The applicant has not included a copy of his credit agreement in this application. In the absence of any contradictory evidence and in line with rule 13(5), the Tribunal accepts the applicant’s version that he signed his credit agreement on 2 July 2020. A copy of the unsigned quotation included in the applicant’s application is dated 3 July 2020, and it is unclear whether it is merely a duplicate of the quotation he claims to have received before the credit agreement.
15. The applicant has not provided evidence proving that the figures in his quotation differ from those in his credit agreement. By his own admission, he confirms that he saw the amounts and was aware that he was entering into a credit agreement for the displayed amounts when signing the credit agreement. It was only afterward that he became aware of certain

discrepancies. However, those discrepancies are confined to the correspondence and invoices received from Haval for the sale of the vehicle and the inclusion of certain accessories.

16. The Tribunal finds that the respondent acted in line with the invoice it received from Haval and did not overcharge the applicant. The respondent appears to have acted in good faith by utilising the price received from Haval as the vehicle's sale price in the applicant's quotation and credit agreement. The applicant's real qualm appears to be with Haval, whom he claims included certain accessories with the vehicle sale, of which he was unaware and did not consent to.
17. The Tribunal further disagrees with the applicant, that a licence fee was included twice in the cost of his credit. The evidence before the Tribunal indicates differently.

CONCLUSION

18. The Tribunal finds that the applicant has not discharged his burden of proof regarding the allegations made against the respondent. For that reason, the application cannot succeed.

ORDER

19. Accordingly, the Tribunal makes the following order:

19.1 The application is dismissed; and

19.2 There is no cost order.

Adv C Sassman

Tribunal member

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

[1] GN 157, G.39663 (4 February 2016).

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