

SOUTH AFRICA / JUDGMENT

Herridge v Alibi Props 1028 CC t/a Midcity Motors (NW19/2023) [2024] ZACONAF 8 (28 June 2024)

[2024] ZACONAF 8

COURT

Consumer Affairs Court

BEFORE

KJP Kgomongwe

CASE / FILE NUMBER

NW19/2023

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

PROCEEDINGS BEFORE THE CONSUMER AFFAIRS COURT FOR

THE NORTH WEST PROVINCE, HELD AT KLERKSDORP

CASE NO: NW19/2023

In the matter between: - MR RONALD M. HERRIDGE PLAINTIFF And ALIBI PROPS 1028 CC T / A
MIDCITY MOTORS DEFENDANT

JUDGEMENT

Delivered on 28 June 2024

Corum: KJP Kgomongwe

Plaintiff Represented by -Consumer protector Mr. S. E. Letsogo

Defendant Represented by Ms. C. Mostert of Theron Jordan and Smit inc.

Summary; special plea on misjoinder and application for proceedings against the defendant to be withdrawn.

ORDER

1. Defendants special plea dismissed
2. No order to cost

INTRODUCTION

[1] PARTIES

- [1] The Plaintiff is Mr. Ronald M. Harridge an adult male person residing at Wilkoppies, Klerksdorp, Northwest.
- [2] The Defendant is cited as Alibi Props 1028 CC T/A Midcity Motors a close corporation conducting its business at 67 Joe Slovo, Klerksdorp. Northwest.

BACKGROUND

- [2] The proceedings in the matter were instituted by the Consumer Protector in the Consumer Affairs Court in terms of Section 9 (b) of the Consumer protection Act and summonses were issued and served on the Defendant to appear before court on 31st January 2024.
- [3] The contract relates to the purchase of a Vito 116 CDI, Crewbus XL Mercedes-Benz by the plaintiff from the Defendant wherein plaintiff paid R12 000,00 deposit and an amount of R368 857.00 financed through Wesbank. The motor vehicle was delivered to the Plaintiff and manifested itself with defects where after the Plaintiff demanded cancellation of the agreement and refund of monies paid.
- [4] Defendant filed their notice to defend the action and also raised a special plea of misjoinder and further pleaded to the averments in the particulars of the Plaintiff.

SPECIAL PLEA

- [5] Defendant raised a special plea stating that "the Defendant is cited as Alibi Props 1028 t/a Midcity Motors. It should be noted that the Defendant in this matter is not Alibi Props 1028 CC t/a Motors, the party who should have been cited as the Defendant in this matter is Midcity 2, Klerksdorp (Pty) Ltd t/a Midcity as this is a private company who has concluded and entered into an agreement with the Plaintiff. Alibi Props CC t/a Midcity Motors has no interest in this matter. The incorrect party is therefore before court and an incorrect party has been joined to these proceedings."
- [6] Parties filed and read into records their submitted heads of arguments/submissions on the special plea raised.

DEFENDANT'S CASE ON SPECIAL PLEA

- [7] Defendants submitted that a special plea of misjoinder and may be raised where a party who should not have been joined to proceedings. In their submissions they argued that the Defendants was not a party to the alleged contract thus should not have been cited in the proceedings. Several authorities were cited in the Defendant's heads of arguments which the court is indebted to and has taken note of.

- [8] Defendants submitted that Defendant Alibi props 1028 CC T/A MIDCITY MOTORS is a wrong party before court and that the correct Defendant being Midcity 2 Klerksdorp (pty) ltd t/a Midcity should have been sued in this matter. It has been submitted that it is a separate entity/company should be entity to be brought before court.
- [9] According to the Defendant the Plaintiff's statement of claim, the Plaintiff relies on an invoice. The tax invoice, which is the accounting source document for sale is used for financing of the motor vehicle and its importance cannot be emphasized enough. The relevant information is clearly identifiable on the tax invoice concerned marked Annexure "a" in Plaintiff's particulars of claim.
- [10] According to the Defendants the person who issued the tax invoice in respect of the sale of the motor vehicle is Midcity 2 Klerksdorp (Pty) Ltd with registration Number: 2016/144022/07 not Alibi Props 1028 CC T/A Midcity Motors Registration Number: 1996/027696/23 Defendant further furnished the company search, documents of the two entities.
- [11] Wherefore the Defendants submit that the transaction was concluded between the claimant and Midcity 2, Klerksdorp (Pty) Ltd and not Alibi Props 1028 CC T/A Midcity Motors.
- [12] Accordingly prayed for the special plea misjoinder to be upheld.

PLAINTIFF'S CASE ON SPECIAL PLEA

- [13] Plaintiffs on behalf of the Consumer submitted and argued that the plaintiff purchased a motor vehicle in question Mercedes-Benz Vito at Midcity MC2 Motors as the name appears on the front portion of the business premises.
- [14] Summonses were served on the Defendants Alibi Props 1028 Cc who duly filed their plea and special plea on the matter.
- [15] Plaintiff submitted that Alibi Props 1028 CC were previously registered owners of the motor vehicle prior to the purchase by the Plaintiff based on the title holder documentation and proof licensing which documentation is attached and reflects Midcity 2 with identification number 9[...] which its CIPC business registration is Alibi Props CC and annexed the relevant documentation in support thereto.
- [16] Plaintiffs further submitted that the contents of the Defendants plea shows that the Defendant is privy to the transaction between the Plaintiff and the Seller.
- [17] The Plaintiff further submitted that an application for joinder and citation of Midcity Klerksdorp (Pty)L td as the 2nd Defendant in these proceedings and that
- [18] Mr. Wener Boshoff, be joined as the 3rd Respondent in these proceedings, is well founded, further that Mr. Wener Boshoff was majorly responsible to the selling of the vehicle and complaints related thereto.

- [19] Plaintiff further submitted that there are four other businesses using a similar name of Midcity Motors with the same logo, emblem, colours and design with the difference in only in number 2, 3 or 4 as the difference.
- [20] Plaintiff further submitted that Messrs. Christo Minnie and Miana Dahms together with other members formed Alibi Props 1028 CC in 1966 and trade as Midcity and they are still active members of the CC.
- [21] On 12th April 2016 Messrs. Christo Minnie and Miana Dahms together with other directors formed a private company called Midcity 2 Klerksdorp (Pty) Ltd which allegedly trades as Midcity 2 motors.
- [22] The plaintiff submitted that the formation of the other two entities confirms the link between two entities usage of the same logo and emblem including same colours used by the two entities is not distinguishable. Christo Minnie and Miana Dahms consciously allowed the name Midcity to be used as a trade name by Midcity 2 Klerksdorp (Pty/Ltd) while they know that they are member of the closed corporation.
- [23] The plaintiff argued that the above conduct was intended to deceive consumers as they would not know who they are dealing with as there is no reference to actively name of the dealer or person contravening the Consumer Protection Act. Further that the Defendants at no stage objected to use of the name Midcity motors by any other persons not related to them indicated nexus between all the persons using the trade name Midcity motors.

APPLICABLE LAW AND PRINCIPLES

- [24] The question of joinder or misjoinder may be raised by way of special plea as in this instance and relates to the right not to be joined to proceedings.
- [25] It is a fundamental principle of law that a court should not at any instance of any party grant an order whereby any other party's interests may be directly affected without formal judicial notice of the proceedings having first been given to such other party.
- [26] Fisheries Development Corporation of SA Ltd vs Jorison and another, fisheries development corporation of SA Ltd vs AWJ Investments Pty/Ltd and others 1979(3/JA 1331(w) at 3379.

It was said: the fact (if it be a fact) that a liquidator has an interest in the subject matter of the defendant's counter claim would be a ground for an application by the defendants to join the liquidator in their counter claim, but it cannot be ground for an objection that the liquidator was not joint as defendant by the plaintiff. Indeed, any such joinder would have been misjoinder since their liquidator is not a necessary party to the plaintiff's action, no relief is claimed as against him and he cannot be affected by any order in the plaintiffs claim.

- [27] HARMS: Civil procedure in the superior courts' last updated February 2019 - 5164 at 8102 regarding direct and substantial interest states that;

- (a) If a party has a direct substantial interest in any order the court might make in proceedings, or if such order cannot be sustained or carried into effect without prejudicing that party is a necessary party and should be joined to the proceedings unless the court is satisfied that he has waived his right to be joined.
 - (b) The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder objection.
 - (c) The term "direct and substantial interest" means an interest in the right, which is the subject matter of the litigation and not merely an indirect financial interest in the litigation.
 - (d) An academic interest is not sufficient on the other hand. The joinder of the joint wrong does as defendant is not necessary though advisable.
 - (e) Likewise, if the parties have a liability which joined in several, the plaintiff is not obliged to join them as co-defendants in the same action but is entitled to choose a target.
 - (f) A mere interest is also insufficient. A litigation funder may be personally liable for cost and be joined as a contingent in the funded litigation. This would be the case where the founder exercises the level of control over the litigation or stands to benefit from litigation.
- [28] Erasmus' superior court practice, second edition volume 2, D1214 defines misjoinder as the joining of several plaintiffs or defendants in one action in circumstances where the law does not sanction that is the objection that the wrong plaintiffs are suing the wrong defendants and being sued. The general principles applicable to non-joinder are applicable to misjoinder as well.
- [29] The rule is that any person is a necessary party and should be joined if such person has a direct and substantial interest in any order the court might make, or if such an order cannot be sustained or carried into effect without prejudicing that party, unless the court is satisfied that he has waived his rights to be joined.
- [30] In *Watson NO V Ngonyama and Another* 2021(5) SA 559 (SCA) at par 53 [2021] ZASCA 74 99 June 2021) In *Transvaal Agricultural Union* this court set out the two tests to determine whether a party has a direct and substantial interest in the outcome of the litigation. The first was to consider whether a third party would have locus Standi to claim relief concerning the same subject matter. The second was to examine whether a situation could arise in which, because the third party has not been joined, any order the court might make would not be resjudicata against him, entitling him to approach the courts again concerning the same subject matter and possibly obtain an order irreconcilable with the order made in the first instance.

CONSUMER LEGISLATION AND ITS INTENTION

- [31] The consumer protection Act concerns the fundamental rights entrenched in the supreme law of our country being Constitution of the Republic of south Africa Act 108 of 1996 which enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality, and freedom.
- [32] The previously existing economic marketplace and framework was fragmented in favor of the developed policies, schemes, complicated contracts agreement to the detriment of the ordinary consumer which resulted in previously unregulated certain unfair business practices to the detriment of the consumer.
- [33] Both the Consumer protection Act and the national Credit act 34 of 2005 provides a comprehensive outline to provide a framework legislation, policies, and government authorities to regulate consumer supplier interaction.
- [34] The Act now provides an extensive framework for consumer protection and aims to develop, enhance, and protect the rights of the consumer and to eliminate unethical suppliers and improper business practices as encapsulated in the preamble to the Consumer Protection Act.
- [35] The act places Mammoth obligation on suppliers and authorities to ensure consumer protection.

INTERPRETATION OF THE ACT

- [36] The Act has its own interpretation clause, which in Section 2 (1) provides that it must be interpreted in a manner that gives effect to the purposes that are set out in Section 3 of the Act.

Section 3:

3.

- (1) The purposes of this Act are to promote and advance the social and economic welfare of consumers in South Africa by-
- (a) establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;
 - (b) reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers-
 - (i) who are low-income persons or persons comprising low-income communities;
 - (ii) who live in remote, isolated or low-density population areas or communities;
 - (iii) who are minors, seniors or other similarly vulnerable consumers; or
 - (iv) whose ability to read and comprehend any advertisement, agreement, mark, instruction, label, warning, notice or other visual representation is limited by reason of low literacy, vision impairment or limited fluency in the language in which the representation is produced, published or presented;
 - (c) promoting fair business practices;
 - (d) protecting consumers from-
 - (i) unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and
 - (ii) deceptive, misleading, unfair or fraudulent conduct;
 - (e) improving consumer awareness and

information and encouraging responsible and informed consumer choice and behaviour;

- (f) promoting consumer confidence, empowerment, and the development of a culture of consumer responsibility, through individual and group education, vigilance, advocacy and activism; (g) providing for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions; and (h) providing for an accessible, consistent, harmonised, effective and efficient system of redress for consumers.

(2) To better ensure the realisation of the purposes of this Act, and the enjoyment of the consumer rights recognised or conferred by this Act, the Commission, in addition to its responsibilities set out elsewhere in this Act, is responsible to-

- (a) take reasonable and practical measures to promote the purposes of this Act and to protect and advance the interests of all consumers, and in particular those consumers contemplated in subsection (1)(b); (b) monitor and report each year to the Minister on the following

matters: (i) The availability of goods and services to persons contemplated in subsection (1)(b), including price and market conditions, conduct and trends affecting their consumer rights; (ii) access to the supply of goods and services by small businesses and persons contemplated in subsection (1)(b); and (iii) any other matter relating to the supply of goods and services; and (c) conduct research and propose policies to the Minister in relation to any matter affecting the supply of goods and services, including proposals for legislative, regulatory or policy initiatives that would improve the realisation and full enjoyment of their consumer rights by persons contemplated in subsection (1)(b).

[37] Realisation of consumer rights

Section

4. (1) Any of the following persons may, in the manner provided for in this Act, approach a court, the Tribunal or the Commission

alleging that a consumer's rights in terms of this Act have been infringed, impaired or threatened, or that prohibited conduct has occurred or is occurring: (a) A person acting on his or her own behalf; (b) an authorised person acting on behalf of another person who cannot act in his or her own name; (c) a person acting as a member of, or in the interest of, a group or class of affected

persons; (d) a person acting in the public interest, with leave of the Tribunal or court, as the case may be; and (e) an association

acting in the interest of its members. (2) In any matter brought before the Tribunal or a court in terms of this Act- (a) the court

must develop the common law as necessary to improve the realisation and enjoyment of consumer rights generally, and in particular by persons contemplated in section 3(1)(b); and (b) the Tribunal or court, as the case may be, must- (i) promote the spirit and purposes of this Act; and (ii) make appropriate orders to give practical effect to the consumer's right of access to

redress, including, but not limited to- (aa) any order provided for in this Act; and (bb) any innovative order that better advances, protects, promotes and assures the realisation by consumers of their rights in terms of this Act. (3) If any provision of this Act, read in its context, can reasonably be construed to have more than one meaning, the Tribunal or court must prefer the meaning that best promotes the spirit and purposes of this Act, and will best improve the realisation and enjoyment of consumer rights generally, and in particular by persons contemplated in section 3(1)(b). (4) To the extent consistent with advancing the purposes and policies of this Act, the Tribunal or court must interpret any standard form, contract or other document prepared or published by or on behalf of a supplier, or required by this Act to be produced by a supplier, to the benefit of the consumer-

- (a) so that any ambiguity that allows for more than one reasonable interpretation of a part of such a document is resolved to the benefit of the consumer; and (b) so that any restriction, limitation, exclusion or deprivation of a consumer's legal rights set out in such a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect, having regard to-
- (i) the content of the document; (ii) the manner and form in which the document was prepared and presented; and (iii) the circumstances of the transaction or agreement. (5) In any dealings with a consumer in the ordinary course of business, a person must not- (a) engage in any conduct contrary to, or calculated to frustrate or defeat the purposes and policy of, this Act; (b) engage in any conduct that is unconscionable, misleading or deceptive, or that is reasonably likely to mislead or deceive; or (c) make any representation about a supplier or any goods or services, or a related matter, unless the person has reasonable grounds for believing that the representation is true.

[38] To determine the field of application of the Act and its legislative intentions.

in terms of the Consumer Protection Act

"a supplier" is any person who markets goods or services.

"to market" means to "supply" or "promote" goods or services.

In terms of Section 1 "promote" means to advertise, display, or offer to supply service or goods in the ordinary cause of business for consideration. It also means to make any representation in the ordinary cause of business that could be inferred as expressing willingness to supply service or goods for consideration or engagement in any other conduct in the ordinary cause of business that could be reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction.

"supply" in relation to goods includes, to sell, rent, exchange and hire in the ordinary cause of business for consideration, and in relation to services it means to sell all services, to perform or to cause services to be performed or provided and to grant access to premises, events, activities or facilities in the ordinary cause of businesses for consideration. The words to grant access to possibility refers to so-called agents or third parties selling, for example tickets for entertainment

shows and tours. There definitions of "supplier" and "supplier" are wide and the act will therefore effect a very wide range of suppliers of goods and services.

DETERMINATION

AND EVALUATION OF MATTER BEFORE COURT

- [39] It is evident in the current matter that the Plaintiff/Consumer purchased a Vito Mercedes-Benz from a supplier Midcity motor in Klerksdorp. It is also evident that there are several entities suppliers who operate and conduct their business activities, market and sells goods to consumers under the name and business enterprise Midcity Motors in Klerksdorp with the same business name, logo, colours under the directorship of Mininie and Miana Dahms, in one institution trade as Alibi Props 1028 Cc Midcity motors in one entity trade as Midcity 2 (Pty) Ltd.
- [40] The dispute before court is the misjoinder of Alibi Props 1028 cc as the Defendants in this matter and whether they have properly been cited or joined and/or misjoinder in the proceedings before court.
- [41] Having regards to the fact that alibi props the Defendant in the matter at no stage raised any objection in the use of their identity, logo, colors by any other enterprise which may have led to misinterpretation to the ordinary consumer also having regard that the Director of Alibi Props and Midcity Motors are the same directors of the Midcity Motors. Ownership and identification of as to which dealership or entity to the ordinary consumer may not be easily discernible and may be misleading and lead to deception.
- [42] An ordinary consumer and/or purchaser of a motor vehicle will not ordinary be interested to do a search on the company profile of any such supplier of goods. The consumer and/or the person in the Plaintiff's capacity will ordinary be interested in the sale and the excitement of purchasing and acquiring a motor vehicle he/she sees and would be happy to be supplied with the goods he sees marketed or displayed including same being delivered to him/her.
- [43] Upon conclusion of the contract the purported supplier delivers the goods, and the ordinary consumer receives the goods which he perceives to be goods that are of a good quality and to serve the purpose for which they are intended.
- [44] The Consumer Protection Act was therefore intended to protect the ordinary consumer against any unexpected exploitation by the supplier. It is not expected of the consumer to an extent of going to do a diligent search to determine whether the supplier and/or the agent he/she is transacting with has legal capacity to enter into the transaction on behalf of the supplier.

- [45] In the ordinary cause of business as in this instance Mr. Harridge the Plaintiff/Consumer purchased a motor vehicle from the supplier to him identified as Midcity Motors and the motor vehicle forming the Merx/Property in dispute was duly purchased through and delivered to him. We are currently faced with the challenge of who the rightful supplier is, whether Midcity or Midcity 2Motors.
- [46] It is this court view that the consumer purchased the vehicle from the supplier being one of the Midcity motors. It is not expected of a consumer to do any diligent search to try establishing who the real supplier of the goods is. It is not in dispute that Mr. Harridge the Plaintiff proceeded to one of the dealerships marketed as Midcity Motors where he purchased a motor vehicle, and the supplier Midcity Motors did deliver the purchased vehicle to him.
- [47] The vehicle purchased and its history of ownership records reflect that Alibi Props 1028 CC T/A Midcity Motors was the previous registered owner of the said motor vehicle consequently this signals that the Defendant before court Alibi Props 1028 CC T/A Midcity Motors was a direct interest in the matter.
- [48] Each case is adjudicated on its own merit, the documents and papers filed, it cannot be found that the defendant may not have direct or substantial interest to their prejudice in the current proceedings in that. In the current matter the plaintiff/consumer purchased a motor vehicle from one of the existing Midcity motors or dealership in Klerksdorp.
- [49] It is not in dispute that there are several dealerships in the Klerksdorp business/market operating under the name Midcity motors using same name, logo and emblem with similar designs and colors.
- [50] Mr. Christos Minnie and Miana Dahm together with other directors formed alibi props 1028CC in 1996 and traded as Midcity and are still trading as such they are also director of another entity with trading by name Midcity 2 Klerksdorp (Pty/Ltd)

THE ORDER

Accordingly, the following order is made:

1. The special plea on misjoinder is dismissed.
2. No order to costs is made.

DATED AT KLERKSDORP ON THIS THE 28 OF JUNE 2024.

KJP KGOMONGWE

CHAIRPERSON

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZACONAF/2024/8.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/herridge-v-alibi-unknown-topic-aconaf-2024>

Prepared on 9 October 2026 · Esheria