

SOUTH AFRICA / JUDGMENT

Kwazulu-Natal Consumer Protector and Another v Allen Street Motors and Others (KZNCT13/2023) [2024] ZACONAF 1 (12 March 2024)

[2024] ZACONAF 1

COURT

Consumer Affairs Court

BEFORE

B Dumisa, P Dabideen, N Nursoo

CASE / FILE NUMBER

KZNCT13/2023

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IN THE KWAZULU-NATAL CONSUMER TRIBUNAL

HELD IN NEWCASTLE

Case number: KZNCT13/2023

In the matter between: KWAZULU-NATAL CONSUMER PROTECTOR FIRST PLAINTIFF JERRY SIHLE SANGWENI SECOND PLAINTIFF (Name of the Consumer) And ALLEN STREET MOTORS FIRST DEFENDANT TOMMYS AUTO PARTS SECOND DEFENDANT DR A JAMOOOLDEEN THIRD DEFENDANT

Coram:

Prof. B Dumisa Chairperson & Presiding Member

Mrs. P. Dabideen Member

Adv N. Nursoo Member

Date of Hearing 28 February 2024

Date of Settlement Order 12 March 2024

SETTLEMENT ORDER

PLAINTIFFS

FIRST PLAINTIFF

1.

The First Plaintiff in this matter is the OFFICE OF THE KWAZULU-NATAL CONSUMER PROTECTOR, established in terms of Section 5 of the KwaZulu-Natal Consumer Protector Act (the "Act") (hereinafter referred to as "the First Plaintiff"), with head Offices at 270 Jabu Street, Pietermaritzburg, in the Province of KwaZulu-Natal.

2.

The Office of the KwaZulu-Natal Consumer Protector falls under the Department of Economic Development, Tourism and Environmental Affairs (EDTEA) in the Province of KwaZulu-Natal.

3.

At the hearing, the First Plaintiff was represented by Mr Ryan Moodley, a Deputy Director in the Office of the KwaZulu-Natal Consumer Protector, in the employ of the First Plaintiff.

4.

The First Plaintiffs Founding Affidavit was deposed by Mr Tshepiso Amos Selepe, a Director within EDTEA, who performs the functions of the Consumer Protector and heads the Consumer Affairs Unit within EDTEA, and the Office of Consumer Protector KwaZulu-Natal.

SECOND PLAINTIFF

5.

The Consumer, who is the Second Plaintiff in this matter is Mr JERRY SIHLE SANGWENI , a major male who resides in Madadeni, Newcastle, in the Province of KwaZulu-Natal (hereinafter referred to as "the Second Plaintiff" or "the Consumer").

6.

The Second Plaintiff lodged his complaint against the Defendants on the 30th of November 2022.

7.

The Second Plaintiff deposed his Founding Affidavit, wherein he fully explained why this matter had to finally be adjudicated by the Tribunal.

8.

At the Hearing, the Second Plaintiff represented himself.

DEFENDANTS FIRST DEFENDANT

9.

The First Defendant in this matter is ALLEN STREET MOTORS, a company duly registered in terms of the company laws of the Republic of South Africa with Registration Number CK1989/029356/23, with its principal place of business situated at 68 Allen Street, Newcastle, in the Province of KwaZulu-Natal (the "First Defendant").

SECOND DEFENDANT

10.

The Second Defendant is TOMMYS AUTO PARTS, a business located at 2 Stephenson Street, Riverside Industrial, Newcastle.

THIRD DEFENDANT

11.

The Third Defendant is Dr A Jamooldeen who owns the Second Defendant.

12.

The Second Defendant and the Third Defendant were the recipient of the payment made by the Second Plaintiff following the sale of the motor vehicle.

BACKGROUND

13.

On the 6th of January 2021 the Second Plaintiff, the Consumer, purchased a WHITE OPEL VIVARO 2010 MODEL with engine number F9Q[...] and Vin Number WOL[...] from the Defendants who assured him that the vehicle was mechanically sound:

13.1 The sales transaction was a bit confusing. The total sale price was R100 000.00 (Hundred Thousand Rand), with a proviso that only R90 000.00 would be payable immediately. The balance of R10 000 would be payable only upon receipt of the log book, licence disc, wheel spanner and spare wheel which were not available at the time of concluding this sales agreement. At the point of sale, the battery was old and almost dead. The First Defendant advised the Consumer to purchase a new battery from the Battery Centre; promising to deduct the cost of the battery from the balance owing.

13.2 The Consumer made the full payment of R90 000 (Ninety Thousand Rand) via EFT on the 9th of January 2021. This payment was made to bank account details belonging to the Second Defendant and the Third Defendant, as provided by the First Defendant.

13.3 The Consumer states that the Defendants did not put the vehicle through any roadworthy test, as verbally undertaken by the salesman. All the things promised at the point of sale were never provided; this includes the original logbook, licence discs, the spare wheel, the wheel spanner, the triangle, etc.

13.4 The car had serious mechanical problems from the onset, and the Defendants gave the Consumer lots of run-arounds without any solutions.

13.5 The Consumer was made to sign an "Voetstoots" "Vehicle Sold As Is" agreement.

13.6 After two weeks of having the vehicle in his possession and having travelled approximately 515 kilometers, the Consumer decided to return the vehicle to the dealership.

13.7 He did not get any cooperation from the Defendants.

14. The Consumer complains that;-

14.1 The Consumer reported the matter to the Motor Industry Ombud of South Africa, MIOSA, who conducted their own investigation; but the Defendants refused to cooperate with the MIOSA Investigation..

14.2 This was the reason the Consumer resorted to the KZN Consumer Protector's office for redress, who further investigated the matter and decided to refer it to the KZN Consumer Tribunal for adjudication.

APPLICATION TYPE AND ORDER SOUGHT

15.

The KZN Consumer Tribunal (hereinafter referred to "the Tribunal") derives the jurisdiction for hearing this matter under Section 21 of the KwaZulu-Natal Consumer Protection Act, 4 of 2013 (the KZNCPA).

16.

This matter will be heard in terms of Section 19(2)(a)(i) and Section 47(3) and Section 54 of the Consumer Protection Act, No 68 of 2008 (the "CPA").

17.

The Consumer's prayers were for:

17.1 The Declaration of the Defendants conduct as prohibited conduct, and in contravention of Section 55(2)(a) to (c), and Section 56 of the Consumer Protection Act 68 of 2008, the CPA;

17.2 Directing that the Defendants refund the Second Plaintiff the amount of R90 000.00 (Ninety Thousand Rand) being the total amount paid as the purchase price; .

17.3 To order the Defendant to pay all of the above payments within 30 days of the judgment.

17.4 To order the Defendant to pay the legal costs of the Second Plaintiff's only if the matter is defended.

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT

18.

The First Plaintiff tried to mediate this matter between the parties; the efforts to mediate proved fruitless.

SUMMONS SERVED ON THE DEFENDANTS

19.

On the 12th of December 2023, the Summons was served on the Defendants, indicating the KZN Consumer Tribunal Hearing set down date of the 28th of February 2024.

20.

The Defendants filed their NOTICE OF INTENTION TO DEFEND on the 15th of January 2024. They did not file an answering affidavit

THE HEARING

21.

The matter was set down for hearing, on merits, on a default basis on the 28th of February 2024 because the Respondent had failed to file an answering affidavit.

22.

At the hearing, the First Plaintiff informed the Chairperson of the KZN Consumer Tribunal that the parties had decided to settle the matter; and are requesting the Tribunal to make their Settlement Agreement an Order of the KZN Consumer Tribunal.

23.

The Tribunal places it on record that, whilst it will confirm the parties' Settlement Agreement as the Settlement Order of the Tribunal, because the parties have so agreed; it is unfortunate that the Tribunal will no longer be able to appropriately deal with the wide-ranging gross breaches of the CPA by the Defendants. In short, the Second Plaintiff has been short-changed through this Settlement Agreement; but the Tribunal has no intention of overriding the wishes of the parties, hence will make this Settlement Agreement an Order of the Tribunal.

ORDER

24.

The Settlement Agreement between the parties, on case number KZNCT11/2023, is hereby made an ORDER of this KwaZulu-Natal Consumer Tribunal. See Annexure A and Annexure B.

25.

Dr A Jamooldeen is confirmed as Surety and Co-Principal Debtor on this Settlement Order.

DATED ON THIS 12th DAY OF MARCH 2024

[Signed]

Prof B Dumisa

PRESIDING TRIBUNAL MEMBER

Mrs P Dabideen (Member) and Adv N Nursoo concurring

ANNEXURE A

IN THE KWAZULU NATAL CONSUMER TRIBUNAL

HELD AT NEWCASTLE

CASE NUMBER: KZNCT13/2023

In the matter between: THE KWAZULU NATAL CONSUMER PROTECTOR FIRST PLAINTIFF
JERRY SIHLE SANGWENI SECOND PLAINTIFF ALLEN STREET MOTORS FIRST DEFENDANT
TOMMYS AUTO PARTS SECOND DEFENDANT DR A JAMOOOLDEEN THIRD DEFENDANT

SETTLEMENT AGREEMENT

WHEREAS the consumer lodged a complaint with the Office of the Kwazulu Natal Consumer Protector in terms of the Consumer Protection Act 68 of 2008 and the Kwazulu Natal Consumer Protection Act 04 of 2013.

AND WHEREAS the Office of the Consumer Protector KwaZulu Natal facilitated the handling of the complaint which was referred to the

KwaZulu Natal Consumer Tribunal.

AND WHEREAS subject to the confirmation of the Consumer Tribunal in terms of S10 of the KwaZulu Natal Consumer Protection Act 04 of 2013 the parties agreed to settle the complaint on the following terms:-

1. The First and Third Defendant hereby acknowledges prohibited conduct on their part and in light of such acknowledgement hereby undertakes to refund the Second Plaintiff an amount of R 60 000.00 (Sixty Thousand Rand) payable in two equal instalments of R 30 000.00 (Thirty Thousand Rand) with the first instalment payable on or before the 1st of April 2024 and the second instalment on or before the 1st of May 2024.
2. The abovementioned payment will be paid directly to the Second Plaintiffs bank account with details as follows:-

Capitec Bank

Account Number: 1[...]

Branch Code: Newcastle

Account Holder details: J Sangweni

3. The Second Plaintiff will have no other claim against any of the Defendants.

4. Should the First Defendant fail to pay as set in point 1 above, the full amount of R90 000.00 (Ninety Thousand Rand) shall immediately become due, owing and payable to the second plaintiff.
5. The Third Defendant namely Dr. A Jamooldeen agrees to be co-principal debtor and surety on behalf of the First Defendant business for the full amount of the principal debt. In the event of the abovementioned payment not being made on the due date, the full amount outstanding will become due and payable by the First Defendant and Second Defendant immediately to the Second Plaintiff.
6. The parties agree that the second plaintiff shall approach any competent court to enforce this agreement which is made an order of the Consumer Tribunal and to further seek interest at the prescribed rate at the time of this agreement was made an order of the KwaZulu Natal Consumer Tribunal.
7. The parties further agree that the terms and conditions of this agreement will be made an order of the KwaZulu Natal Consumer Tribunal.

Dated at NEWCASTLE on this 28th day of February 2024.

First Plaintiff

Represented by Mr R Moodley

Jerry Sihle Sangweni

Second Plaintiff

Mr ZC Chothia (Attorney)

Chothia Attorneys

On behalf of the

First, Second and Third Defendant

ANNEXURE B

Special Power of Attorney

I, the undersigned

DR A. JAMALOODEEN

Identity Number: 7[...]

Do hereby grant power of attorney to Zubair Cassim Chothia with Identity No. 9[...], of Chothia Attorneys to attend to the matter between myself and The Kwa-Zulu Natal Consumer Protector under Case Number. KZNCT13/2023, to sign all necessary documents and to enter into settlement negotiations on my behalf.

Sighed and Dated at Newcastle on this 28 day of February 2024.

Ahmed Jamalooddeen

Behalf of Allen Street

Motors, not personally

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Prepared on 13 October 2026 · Esheria