

SOUTH AFRICA / JUDGMENT

KwaZulu-Natal Consumer Protector and
Another v Funnell Cars and Another
(KZNCT1/2024) [2024] ZACONAF 2 (21 June 2024)
[2024] ZACONAF 2

COURT
Consumer Affairs Court

BEFORE
B Dumisa, N Cawe, P Dabideen

CASE / FILE NUMBER
KZNCT1/2024

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IN THE KWAZULU-NATAL CONSUMER TRIBUNAL

HELD IN DURBAN

Case number: KZNCT1/2024

In the matter between:

KWAZULU-NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

ARISHKA BHAGOTHIDIN

SECOND PLAINTIFF

(Name of the Consumer)

and

FUNNELL CARS

FIRST DEFENDANT

BRADLEY FUNNELL

SECOND DEFENDANT

Coram:

Prof. B Dumisa

Chairperson & Presiding Member

Ms. N. Cawe

Member

Mrs. P. Dabideen

Member

Date of Hearing

05 April 2024

Date of Settlement Order 21 June 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 2[...] J[...] 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.

SECOND PLAINTIFF

4. The Consumer, who is the Second Plaintiff in this matter is Ms ARISHKA BHAGOTHIDIN, a major female who resides in Malvern, Ethekwini, in the Province of KwaZulu-Natal (hereinafter referred to as "the Second Plaintiff" or "the Consumer").
5. The Second Plaintiff lodged her complaint against the Defendants on the 30th of January 2024.
6. The Second Plaintiff deposed her Founding Affidavit, wherein she fully explained why this matter had to finally be adjudicated by the Tribunal.
7. At the Hearing, the Second Plaintiff represented herself.

DEFENDANTS

FIRST DEFENDANT

8. The First Defendant in this matter is FUNNELL CARS, a company duly registered in terms of the company laws of the Republic of South Africa, with its principal place of business situated at 5[...] O[...] M[...] Road, Hillcrest, Ethekwini, in the Province of KwaZulu-Natal (the "First Defendant").

SECOND DEFENDANT

9. The Second Defendant is BRADLEY FUNNELL, the owner/ manager of the First Defendant.

BACKGROUND

10. The Consumer, purchased a GOLF GTI 2010 from the Defendants who assured her that the vehicle was mechanically sound, though the Defendants told her that they were still waiting for its Certificate of Roadworthiness, COR. She soon discovered that the car had many defects:

10.1 It had a massive oil leak;

10.2 She even had to replace the tyres.

10.3 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

11. 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).

12. 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").

13. The Consumer's prayers were for:

13.1 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;

13.2 Directing that the Defendants refund the Second Plaintiff the amount of R375 000.00 (THREE HUNDRED AND SEVENTY FIVE RAND) being the total amount paid as the purchase price; .

13.3 To order the Defendant to pay all of the above payments within 15 days of the judgment.

13.4 Directing the Defendant to refrain from conducting future business in a manner that is inappropriate; and

13.5 Directing the Defendants, jointly and severally, the one paying the other to be absolved, to pay an administrative penalty in a sum still to be determined by the Consumer Tribunal and/or making any other appropriate order contemplated under Section 4(2)(b)(ii) of the CPA.

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT

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

SUMMONS SERVED ON THE DEFENDANTS

15. On the 19th of March 2024, the Summons was served on the Defendants, indicating the KZN Consumer Tribunal Hearing set down date of the 5th of April 2024.
16. The Defendants did not file an answering affidavit

THE HEARING

17. The matter was initially set down for hearing, on merits, on a default basis because the Respondent had failed to file an answering affidavit.
18. Before the hearing date, 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.
19. The Settlement Order follows:

ORDER

20. The Settlement Agreement between the parties, on case number KZNCT01/2024, is hereby made an ORDER of this KwaZulu-Natal Consumer Tribunal. See Annexure A.

DATED ON THIS 21st DAY OF JUNE 2024

[Signed]

Prof B Dumisa

PRESIDING TRIBUNAL MEMBER

Ms. N. Cawe (Deputy Chairperson) and Mrs. P. Dabideen (Member) concurring

ANNEXURE A

IN THE KWAZULU NATAL CONSUMER TRIBUNAL HELD AT DURBAN

CASE NUMBER: KZNCT01/2024

THE KWAZULU-NATAL CONSUMER PROTECTOR FIRST PLAINTIFF

ARISHKA BHAGOTHIDIN

SECOND PLAINTIFF

FUNNELL CARS

FIRST DEFENDANT

BRADLEY FUNNELL

SECOND 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.

1. The First and Second Defendant hereby acknowledges prohibited conduct on their part and considering such acknowledgement hereby undertakes to refund the Second Plaintiff as follows:

1.1 To pay the amount of R 25 000.00 (Twenty-Five Thousand Rand) directly to the Second Plaintiffs bank account;

1.2 To pay the full and total balance of R237 295.83 (Two Hundred and Thirty- Seven Thousand Two Hundred Ninety-Five and Eighty Three Rand) directly to Standard Bank of South Africa by no later than the 31st of May 2024.

1.3 To provide proof of payment as set out in 1.1. and 1.2 above to the First and Second Plaintiff.

2. The abovementioned payment R 25 000.00 (Twenty- Five Thousand Rand) will be paid directly to the Second Plaintiffs bank account with details as follows: -

CAPITEC BANK

ACCOUNT NUMBER: 2[...]

ACCOUNT HOLDER: ARISHKA BHAGOTHIDIN

3. The Second Plaintiff will have no other claim against the Defendant.

4. 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.

5. 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 DURBAN on this 5thday of April 2024.

First Plaintiff

Represented by Ryan Moodley

ARISHKA BHAGOTHIDIN

BRADLEY FUNNELL

ON BEHALF OF FUNNELL CARS

Second Plaintiff

First and Second Defendant

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Prepared on 14 October 2026 · Esheria