

SOUTH AFRICA / JUDGMENT

Ledwaba v Auto Alpina (Pty) Ltd (GCC 09/2020) [2020] ZACONAF 7 (14 December 2020) [2020] ZACONAF 7

COURT

Consumer Affairs Court

BEFORE

MA du Plessis, M Phukubje, P Samuels

CASE / FILE NUMBER

GCC 09/2020

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IN

THE CONSUMER AFFAIRS COURT FOR THE PROVINCE OF GAUTENG

HELD

AT JOHANNESBURG

CASE

NO: GCC 09/2020

In

the matter between:

KABELO
CORNELIUS LEDWABA
Plaintiff
And
AUTO
ALPINA (PTY) LTD
Defendant

JUDGMENT

1. This is an action in terms of which the Plaintiff seeks the right to return a motor vehicle that he bought from the Defendant on or about 16 December 2016.
2016. The plaintiff based his claim on sections 56 and 57 of the Consumer Protection Act, No 68 of 2008 (the CPA).

The Plaintiff furthermore claims reimbursement for expenses incurred.

2. The matter was previously referred to the Motor Industry Ombudsman of South Africa who on or about 14 August 2017 found in favour of the Defendant under reference number 342896.
3. On 2 March 2020 the National Consumer Commission, in terms of section 72(1)(b) of the CPA, the matter to the Gauteng Consumer Affairs Office for investigation.
4. On 30 November 2020, summons was issued in terms of the Consumer Affairs (Unfair Business Practices) Act, No 7 of 1996.
5. At the hearing of this matter on 14 December 2020, the Plaintiff was represented by the Consumer Protector, Ms Sanele Mthuli. The

Defendant was represented by Advocate Mtukushe.

Point in limine

6. Advocate Mtukushe raised the defense of prescription. He indicated that the matter commenced during 2016; stating that the Plaintiffs complaints were addressed by the Defendant. The Plaintiff however continued with his complaints during the course of 2017. These were adjudicated by the Motor Industry Ombudsman of South Africa during August 2017. Advocate Mtukushe concluded that the matter has prescribed.
7. The members of this Consumer Affairs Court decided, on the point in limine that was raised as follows:

7.1 Section 116(1)(a) of the CPA reads:

116. (1) Limitations of bringing action

A complaint in terms of this Act may not be referred or made to the Tribunal or to a consumer court more than three years after—

(a) the act or omission that is the cause of the complaint; or .

7.2 The matter has prescribed and the point in limine is upheld.

7.3 In view of the foregoing, it is therefore not necessary to comment on the findings of the Motor Industry Ombudsman of South Africa in August 2017, or the subsequent referral by the National Consumer Commission, or hearing the facts of the matter.

7.4 The Plaintiffs case is dismissed.

ORDERED as such at JOHANNESBURG on 14 December 2020.

Prof. MA du Plessis

CHAIRPERSON

MEMBERS M Phukubje and P Samuels concurred

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Prepared on 10 October 2026 · Esheria