

SOUTH AFRICA / JUDGMENT

Leff v Eastrand Engen and Turbo (NCT/348735/2024/114(1)) [2025] ZANCT 2 (3 February 2025) [2025] ZANCT 2

COURT

National Consumer Tribunal

BEFORE

C Sassman, P Manzi-Ntshingila, MC Peenze

CASE / FILE NUMBER

NCT/318787/2024/75(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/318787/2024/75(1)(b)

In the matter between: PETRUS GERHARDUS MARTINUS LEFF APPLICANT and EASTRAND
ENGEN AND TURBO RESPONDENT

Coram:

Adv C Sassman

- Presiding Tribunal member

Ms P Manzi-Ntshingila

- Tribunal member

Dr MC Peenze

- Tribunal member

Date of hearing

- 30 January 2025

Date of

judgment

- 3 February 2025

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is Petrus Gerhardus Martinus Leff (the applicant). The applicant is a consumer, as defined in section 1 of the Consumer Protection Act 68 of 2008 (CPA). At the hearing, the applicant represented himself.
2. The respondent is Eastrand Engine and Turbo (the respondent), a supplier, as defined in section 1 of the CPA. The respondent specialises in rebuilding vehicle engines. The respondent was not represented at the hearing.

TERMINOLOGY

3. A reference to a section in this judgment refers to a section of the CPA.

APPLICATION TYPE

4. This is an unopposed application in terms of section 75(1)(b). In this application, the applicant, with leave granted by the Tribunal, seeks redress against the respondent. The applicant alleges that the respondent contravened his rights in terms of the CPA by failing to recondition his vehicle's engine correctly.

BACKGROUND

5. On 16 September 2022, the applicant enlisted the respondent to recondition his Ford 3L TDCI engine and paid R25 000.00 for the service. On 7 October 2022, the applicant collected the engine from the respondent in Kempton Park and returned to Mpumalanga with it. The applicant requested a local fitment centre to fit the engine in his vehicle as they were based close to where he lived. While unwrapping the engine, they noticed its valve caps were loose. The applicant informed the respondent, and the parties agreed that the third party fitting the engine would repair the valve caps.
6. Upon installation, the engine could not run properly and emitted water. At the end of October 2022, the applicant returned the engine to the respondent for further repairs. The applicant was requested to pay an additional R5 500.00 to replace the engine's cylinder head, which he did. On 30 November 2022, the respondent returned the repaired engine to the applicant by courier, but the engine was damaged during transit. The respondent denied any liability and refused to replace the damaged parts.
7. The applicant pursued the matter with the respondent in vain. The applicant then filed a complaint with the Motor Industry Ombudsman of South Africa (MIOSA). On 5 June 2023, MIOSA recommended that the applicant return the engine to the respondent for assessment and repair, but the respondent was unwilling to repair the engine. The applicant also filed a complaint with the National Consumer Commission (NCC). On 4 March 2024, the NCC issued a notice of non-referral. The NCC indicated that the remedy sought could not be granted because the applicant used a third party to affect repairs to the engine, which

annulled the warranty.

THE APPLICANT'S

SUBMISSIONS

8. The applicant submitted that the service he received from the respondent was not what he had expected. Initially, he was advised that the reconditioning would only take three days, but it took months of going back and forth, and the engine he received did not work. The respondent was dishonest about replacing the engine's cylinder head with a new one when, in fact, they replaced it with a used one. In dealing with the respondent to resolve the problem, the respondent's employees swore at him, which he found very upsetting. This conduct and manner of operating is against his principles and beliefs. The applicant would like the respondent to refund him the money he paid to recondition the engine and the costs of further repairs.

APPLICABLE RULE AND SECTIONS OF THE ACT

9. Rule 13(5) states that any fact or allegation in the application or referral not explicitly denied or admitted in an answering affidavit will be deemed admitted by the respondent.
10. Section 54(1) (b-c) states that when a supplier undertakes to perform any services for a consumer, the consumer has the right to the performance of those services, in a manner and quality that persons are generally entitled to expect. In addition, the goods used by the supplier must be free of defects and of a quality that persons are generally entitled to expect.
11. Section 54(2) (a-b) states that if a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to remedy the defect in quality or refund the consumer a reasonable portion of the price paid for the services performed.
12. Section 57(1) states that a service provider warrants every new and reconditioned part installed during any repair or maintenance work and the labour required to install it for three months after the installation date or such longer period as the supplier may specify in writing. Section 57(2) further states that the warranty in section 57(1) runs concurrent with any other deemed, implied or express warranty but is rendered void if the consumer has subjected the reconditioned part or goods to misuse or abuse. Furthermore, the warranty does not apply to normal wear and tear caused during the ordinary use of the goods.

CONSIDERATION OF THE EVIDENCE

13. By failing to oppose the matter, the respondent lost the opportunity to defend the allegations made against it. The Tribunal is seized only with the applicant's documentary evidence and oral arguments. In terms of rule 13(5), The Tribunal deems the facts alleged by the applicant as admitted by the respondent because it elected not to be represented at the proceedings or oppose the matter.
14. The applicant first collected the engine from the respondent on 7 October 2022, and after further repairs, it was returned to the applicant a second time by courier on 30 November 2022. Both instances fell within the three-month warranty provided on reconditioned parts in terms of section 57(1). There is no evidence that the applicant misused or abused the engine or that the problems experienced resulted from ordinary wear and tear.
15. The Tribunal rejects the NCC's finding that the applicant's warranty in terms of section 57(1) is void due to third-party repairs. The loose valve caps noticed while the applicant unwrapped the engine sufficiently indicate that the respondent applied poor workmanship when reconditioning the engine. The evidence further suggests that the respondent agreed to the local fitment centre repairing the valve caps because the applicant resides approximately 300km from the respondent's premises. The respondent conducted further repairs to the engine thereafter.
16. The Tribunal is persuaded that the respondent failed to provide a service in a manner and quality that persons are generally entitled to expect. The loose valve caps, the engine's failure to run correctly when installed, and the need for further repairs are evidence thereof.
17. The rights afforded to consumers under the CPA are there to protect them. An infringement of those rights could have serious financial consequences for a consumer. In this case, the applicant has been financially prejudiced by spending R30 500.00 in vain. This undoubtedly continues to cause him a great deal of distress.
18. The Tribunal considered the evidence before it and the extent of the failure of the engine to perform as required. It finds that the applicant is entitled to a refund of a reasonable portion of the price paid to the respondent. A refund of 90% of the total price paid to the respondent would be suitable in this instance.

CONCLUSION

19. In failing to provide its service in a manner and quality that persons are generally entitled to expect, the respondent has contravened sections 54(1)(b) and (c). In line with section 54(2)(b), the applicant is entitled to a refund of R27 450.00.

ORDER

20. Accordingly, the Tribunal makes the following order:

20.1 The respondent has contravened sections 54(1)(b) and (c) of the CPA;

20.2 The respondent's contravention of sections 54(1)(b) and (c) of the CPA is declared prohibited conduct;

20.3 The respondent is ordered to refund the applicant R27 450.00 (twenty-seven thousand four hundred and fifty rand) within ten business days of issuing this judgment.

20.4 There is no cost order.

Adv C Sassman

Presiding Tribunal member

Tribunal members Ms P Manzi-Ntshingila and Dr MC Peenze concur.

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