

SOUTH AFRICA / JUDGMENT

Leotlela v Stepmer Panel Beaters CC t/a Car Doctor Panel Beaters (NCT/270106/2023/75(1)(b))

[2024] ZANCT 49 (9 October 2024)

[2024] ZANCT 49

COURT

National Consumer Tribunal

BEFORE

S Hockey, A Potwana, C Sassman

CASE / FILE NUMBER

NCT/270106/2023/75(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case No: NCT/270106/2023/75(1)(b)

In the matter between: JOHANNES TUMELO LEOTLELA APPLICANT And STEPMER PANEL BEATERS CC RESPONDENT T/A CAR DOCTOR PANEL BEATERS

Coram:

Mr S Hockey

- Presiding Tribunal member

Dr A Potwana

- Tribunal member

Adv C Sassman

- Tribunal member

Date of the hearing:

- 27 September 2024

Date of

judgment:

- 9 October 2024

JUDGMENT AND REASONS**THE PARTIES**

1. The applicant is Johannes Tumelo Leotlela (the applicant), a consumer as defined in section 1 of the Consumer Protection Act, 2008 (the CPA)[1]. At the hearing of this matter, the applicant represented himself.
2. The respondent is Stepmer Panel Beaters CC, trading as Car Doctor Panel Beaters (the respondent), a close corporation incorporated under the company laws of South Africa and a supplier as defined in section 1 of the CPA. At the hearing, the respondent was represented by Ms Simone Rossouw, a candidate attorney from Vos Viljoen and Becker Attorneys.

APPLICATION TYPE AND JURISDICTION

3. The applicant first referred his complaint to the National Consumer Commission (the NCC), who, after an assessment thereof, concluded on 10 February 2023 that the redress sought by the applicant could not be provided in terms of the CPA. The NCC noted that the applicant had not provided evidence that supported his allegation that the repairs done by the respondent on his vehicle resulted in further defects that he complained about.
4. Thereafter, the applicant referred this matter to the National Consumer Tribunal (the Tribunal) in terms of section 75(1)(b). This section provides that if the NCC issued a notice of non-referral as it did in the present matter, the complainant may refer the matter directly to the Tribunal, with leave of the Tribunal. The Tribunal granted such leave on 7 December 2023.
5. Accordingly, the Tribunal has jurisdiction in terms of section 73(2)(b) and section 27(a)(ii)[2] of the National Credit Act 34 of 2005 (the NCA) to consider this matter.

BACKGROUND

6. In May 2022, the applicant engaged the respondent's services to repair his damaged vehicle after an accident. The applicant's insurance company covered the costs of the repairs.
7. The applicant alleges that after the vehicle was returned to him, he noticed several problems, namely that the heater, air conditioner, electrical fan, radiator fan, and climate control unit needed to be fixed. Also, he claims that certain bonnet pipes and switches were not working.

8. The applicant then returned the vehicle to the respondent, but his problems with the vehicle were not resolved. In referring his complaint to the NCC, the applicant stated only that there was a problem with the heater, which he confirmed was fixed by the respondent. However, he mentioned a further problem: the vehicle was smoking when returned to him after being repaired the first time. He stated that the respondent told him that the problem with the vehicle was related to a faulty oxygen sensor.
9. The respondent refused to attend to any further repairs to the vehicle based on their allegation that the faults were unrelated to the repairs they had done. From correspondence attached to the applicant's papers, it appears that the respondent had the vehicle tested, and they reported that there was an issue with its fuel system[3]. The respondent also obtained a report from a Volkswagen dealership confirming that they found fault with the vehicle's oxygen sensor, which required replacement.[4]
10. Since the vehicle was at the respondent's premises for a considerable period, the respondent demanded that the applicant pay storage fees, which the latter refused. The respondent accordingly issued a summons against the applicant for the payment of storage fees. The matter was not defended, resulting in the respondent obtaining a default judgment against the applicant.
11. The applicant failed to satisfy the judgment against him, resulting in the respondent obtaining a writ of attachment. The vehicle was attached and sold in execution in accordance with the writ.
12. The applicant disputes that the respondent was entitled to storage fees. The relief he seeks in the present matter is not elegantly stated, but in effect, he wants an order for the respondent to fix his vehicle and confirmation that he does not have to pay storage fees. By implication, he wants the repaired vehicle to be returned to him.

LEGAL CONSIDERATIONS AND

ANALYSIS

13. Since the applicant engaged the respondent for a service, section 54 is relevant. In terms of this section, when a supplier undertakes to perform any service for or on behalf of a consumer, the consumer has the following rights in terms of section 54(1):

“(a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;

- (b) the performance of the services in a manner and quality that persons are generally entitled to expect;
- (c) the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services; and

- (d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services,

having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.”

14. Section 54(2) provides that if a supplier fails to perform a service to the standard contemplated in subsection (1), the consumer may require the supplier to either remedy any defect in the quality of the service or refund the consumer a reasonable portion of the price paid for the services performed, having regard to the extent of the failure.
15. From what has transpired in this matter, the applicant cannot rely on the relief in section 54(2). The alleged defect in the quality of the service rendered by the respondent cannot be remedied, as the vehicle had been sold in execution. Furthermore, the applicant did not pay for the repairs to his vehicle, as his insurer covered this. There is no indication that he even had to pay an excess amount under his insurance policy. Therefore, a refund of any portion of the price paid for the services rendered by the respondent cannot be payable to the applicant.
16. In any event, and in addition to the above, the applicant has not shown on a balance of probabilities that the problems he encountered with the vehicle resulted from the repairs that the respondent had carried out.
17. In the circumstances of the above, the Tribunal cannot find in favour of the applicant.

THE ORDER

18. In the result, the following order is made:

18.1. The application is dismissed.

18.2. There is no order as to costs.

Mr S Hockey (Presiding Tribunal member)

Tribunal members Dr A Potwana and Adv C Sassman concur.

- [1] Any reference to a section in this judgment will be a reference to a section of the CPA.
- [2] This section provides that the Tribunal or a member of the Tribunal acting alone in accordance with the NCA or the CPA may adjudicate in relation to any allegations of prohibited conduct.
- [3] See the respondent’s letter on page 62 of the record.
- [4] Record, page 61.

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