

SOUTH AFRICA / JUDGMENT

Magadla v Xavier Used Cars (GCC 09/2019) [2020] ZACONAF 5 (6 November 2020) [2020] ZACONAF 5

COURT

Consumer Affairs Court

BEFORE

M A du Plessis, M Phukubje, P Opperman

CASE / FILE NUMBER

GCC 09/2019

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IN

THE CONSUMER AFFAIRS COURT FOR THE PROVINCE OF GAUTENG HELD AT
JOHANNESBURG

CASE

NO: GCC 09/2019

In

the matter between:

ARTHUR
VUYISILE MAGADLA
Plaintiff
and
XAVIER
USED CARS
Defendant

JUDGMENT

1. This is an action in terms of which the Plaintiff seeks compensation for loss resulting from the Respondent's failure to exercise due care over property belonging to the Plaintiff, with interest thereon, as set out in the Particulars of Claim to the Summons.
2. At the hearing of this matter on 6 November 2019, the Plaintiff was represented by the Consumer Protector. The Defendant was represented by its sole proprietor, Mr Themba Mahlangu.

The

facts

3. The common cause facts not in dispute are:

3.1 The Plaintiff and Defendant entered into a partly written and partly oral agreement on 28 November 2018 whereby the Respondent undertook to fit an engine, with registration no 29905319, to the Plaintiffs motor vehicle with the following details:

2004 BMW 3 Series 330i Sport A/T (e46) f/l

VIN Number: [...]

Engine Number: [...]

Registration Number: HH77LFGP

3.2 The Plaintiff paid the following amounts to the Defendant:

3.2.1 Payments for which written proof was provided:

On 29 November 2018, an amount of R10 000,00 as a deposit on an invoice for an amount of R18 000,00 for a X5 3L engine, dated 28 November 2018.

On 12 February 2019, an amount of R9 500,00 for a BMW (e46) lockset and for the fitting thereof.

3.2.2 Oral evidence of payment of the R8 000,00 balance on the invoice dated 28 November 2018, by the Plaintiff, was not placed in dispute by the Defendant.

4. The parties agreed that the Respondent would commence with the specified work on the vehicle on 29 November 2018. They further agreed that the repairs must be completed by 25 December 2018.
5. The Plaintiff complied with his obligations in terms of the agreement.
6. The Defendant failed to perform by 25 December 2018, as agreed.

7. The Plaintiff approached the Gauteng Consumer Affairs office for assistance. After an inspection of the vehicle carried out at the Respondent's principle place of business, an agreement was reached that the Respondent will complete the necessary repairs on or before 2 May

2019. The Respondent failed to honour this agreement.

8. Subsequent inspection revealed that the vehicle was disassembled and that parts of the vehicle were missing. It was further revealed that re-assembly of the vehicle will be either impossible, or that the cost thereof will be more than the value of the vehicle.
9. The Plaintiff requested payment of the value of the vehicle as compensation for the loss of the vehicle due to the Respondent's failure.
10. The matter was postponed sine die in order for the Plaintiff to provide the members of the Gauteng Consumer Affairs Court with proof of the value of the vehicle.

The hearing of the matter resumed on 6 November 2020.

11. The Defendant, despite due service of a notice of set-down, failed to attend the proceedings.
12. The Plaintiff provided the Tribunal with a valuation of his vehicle to the amount of R52 400,00. The valuation was prepared by BMW Joburg City who was able to extract the details of the Plaintiff's vehicle from the BMW system.
13. Section 54 of the Consumer Protection Act, No 68 of 2008 (CPA) provides as follows: 54. Consumer's rights to demand quality service
 - (1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to—
 - (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.

- (2) If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either—
- (a) remedy any defect in the quality of the services performed or goods supplied; or
 - (b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.
14. In the circumstances, I hereby find that the Defendant's conduct was in contravention of s54(1) of the CPA. It is further evident, from evidence presented during the trial, that the Defendant will not be able to remedy any defects as contemplated in s54(2)(a). In interpreting s54(2)(b) I find that the extent of the failure by the Defendant was complete and that a refund to the Plaintiff in these circumstances would amount to the value of the vehicle.
15. I further find that the Defendant engaged in prohibited conduct as defined in section 1 of the Consumer Protection Act, No 68 of 2008. The Defendant furthermore engaged in an unfair business practice as defined in section 1 of the Consumer Protection (Unfair Business Protection) Act, No 7 of 1996.
16. In the circumstances, the following is ordered:
- 16.1 the Defendant is ordered to pay the Plaintiff an amount of R52 400,00 (fifty two thousand four hundred Rands); and
- 16.2 interest on the amount in paragraph 16.1 above at the prescribed rate from the date of this order until date of payment.
- ORDERED as such at JOHANNESBURG on 6 November 2020.
- Prof. M A du Plessis
- CHAIRPERSON
- MEMBERS M Phukubje and P Opperman concurred

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