

SOUTH AFRICA / JUDGMENT

Maree v Nissan SA (Pty) Ltd (NCT/95354/2017/75(1)(b)) [2018] ZANCT 133 (16 October 2018)

[2018] ZANCT 133

COURT

National Consumer Tribunal

BEFORE

MC Peenze

CASE / FILE NUMBER

NCT/95354/2017/75(1)(b)

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IN

THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION

Case number: NCT/95354/2017/75(1)(b)

In the matter between: ROBERTO MAREE
APPLICANT
and
NISSAN
SA (PTY)
LTD
RESPONDENT

Coram: Dr.
MC Peenze – Presiding Member
Date
of hearing: 08
October 2018

JUDGMENT**THE PARTIES**

1. The Applicant is Roberto Maree, an adult major male person ("the Applicant").
2. The Respondent is Nissan SA (Pty) Ltd, a company that is duly registered in terms of the company laws of the Republic of South Africa ("the Respondent").

THE APPLICATION

3. This is an application by the Applicant for leave to refer his complaint, which was non-referred by the National Consumer Commission (the "NCC" or "Commission"), directly to the National Consumer Tribunal (the "Tribunal") in terms of section 75(1)(b) of the Consumer Protection Act, 2008 (the "CPA").
4. In an application of this nature, the Tribunal must first consider whether it will grant the Applicant leave to hear the matter. If the leave is granted, then the Tribunal will consider the merits of the Application.
5. The Respondent filed a notice of its intention to oppose on 26 March 2018, but subsequently did not file any answering affidavit to oppose the leave to refer application. The application had been set down on an unopposed basis.

BACKGROUND

6. The Applicant is a consumer, who purchased a new Nissan NP 300 bakkie, (hereafter called the "Nissan") from the Respondent in June 2016. According to the Applicant, he discovered within a month that the Nissan was badly rusted and that water was leaking into the vehicle.
7. The Applicant informed the Respondent of the problems and poor workmanship, requesting the Respondent to replace the Nissan. The

Respondent sent a certain Mr "Kagiso" from Head Office to inspect the Nissan. Mr "Kagiso" agreed that the workmanship

was poor.

8. The Respondent attempted hereafter to "fix" the problems, which resulted in a bad cover-up job, according to the Respondent. The Respondent sprayed over the rust and did not remove it. In some instances, the spray did not cover all the rust areas.

9. The Applicant filed a complaint with the Motor Industry Ombudsman of South Africa (MIOSA), which concluded that the Respondent reserved the right to continue with attempts to repair the Nissan. Hereafter the Applicant referred his complaint to the National Consumer Commission, since he lost trust in the Respondent's attempts to repair the vehicle.
10. The Applicant approached the Tribunal after receiving a notice of non-referral from the NCC. Subsequently, the matter was set down for the hearing of an Application in terms of Section 75(1)(b) of the Act.

THE HEARING

11. A hearing was convened for and held on 8 October 2018 in Centurion. The Applicant represented himself. The Respondent's lawyers were present as observers, but indicated that they are not opposing the leave to refer application.
12. The Applicant explained his case and detailed his reasons for his all allegations of poor workmanship and alleged contraventions of the Consumer Protection Act. In particular, he submitted that the matter was of grave importance to him and that he would like to be refunded in terms of the Consumer Protection Act. The Applicant stated that he had lost complete faith in the ability of the Respondent to repair the vehicle and that he wanted to be refunded what he had paid for the vehicle.

CONSIDERATION OF THE MERITS OF THE APPLICATION FOR LEAVE

13. The Tribunal set out the factors that must be evaluated in order to ascertain whether to grant leave in *Coertze and Burger v Young*.^[1] In that case, which has been referred to by the Tribunal in a number of other decisions,^[2] the Tribunal held that the following two factors should be considered:
 - (1) The Applicant's reasonable prospects of success with the referral; and
 - (2) Whether the matter is of substantial importance to the Applicant or the Respondent.
14. It is firstly very clear that the matter is of substantial importance to the Applicant. He had gone to a great deal of effort to attempt to resolve the matter with the Respondent, to lodge the complaint with the MIOSA and the Commission and to pursue it further with the Tribunal. His level of anxiety and frustration at having to drive a vehicle that he believes is unsafe, is plain to see. The Applicant explained that he does not have faith in the Respondent any longer and he needs a reliable vehicle to earn a living to support himself.
15. The Applicant had identified a number of sections in the Consumer Protection Act which he argued are relevant to his matter. These include section 54, section 55 and 56 (3).

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16. Section 54 provides that a consumer is entitled to demand quality service. The Applicant alleged that throughout his dealings with the Respondent he had been treated poorly and therefore the Respondent had acted in contravention of this section. In terms of section 54(2), when a supplier fails to perform a service to the standards contemplated in the section, the consumer may require the supplier to remedy any defect in the quality of the services performed or goods supplied; or refund the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.
17. Section 55 of the Act deals with the consumer's rights to safe, good quality goods. Applying this section to the Applicant's matter, he had the right to receive a motor vehicle that was reasonably suitable for the purpose for which it was generally intended. The vehicle must be of good quality, in good working order and free of any defects and must be usable and durable for a reasonable period of time, having regard to the use to which vehicles of this nature would normally be put. The Applicant had argued that his vehicle was defective from within a month that he purchased it and that his attempts to have this addressed by the Respondent were unsuccessful.
18. The Applicant also referred to section 56 (3). In terms of this section, if a supplier repairs any particular goods or any component of any such goods, and within three months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier must replace the goods; or refund the consumer the price paid by the consumer for the goods.
19. The Applicant alleged that he purchased a defective vehicle and attempts to have the Respondent repair the vehicle have failed to the point where the Applicant has lost faith in the Respondent. This matter therefore clearly falls within the ambit of the CPA. It should be noted that, in line with section 56 (4) of the CPA, the implied warranty imposed by 56(1) and the right to return goods set out in 56(2) are each in addition to any other implied or expressed warranty or condition stipulated by the producer or retailer.
20. In considering the reasonable prospects of success the Tribunal is satisfied that the Applicant has laid a foundation for a complaint in terms of the CPA. Should the Tribunal find that the Respondent has contravened the Act and has engaged in prohibited conduct; the Tribunal will have to decide on an appropriate remedy, including whether or not it would be appropriate in these circumstances to impose an administrative penalty. This can only be done once all the issues are fully ventilated before the Tribunal.

ORDER

21. Accordingly, the Tribunal makes the following order:

21.1. The Applicant's application for leave to refer the matter directly to the Tribunal is granted and

21.2. No order is made as to costs.

Dated at Centurion on this 16th day of October 2018

[Signed]

MC PEENZE

PRESIDING MEMBER

[1] NCT/ 7142/ 2012/7S(1))(b)&(2) .

[2] See also Mbekeni v Freeway Toyota (NCT/36177/2015/7S(1)(b)(2016) ZANCT 18 (1 April 2016) and Papo v Standard Bank of South Africa ltd (NCT/69527/2016/14 [2017] ZANCT 81 (27 July 2017)).

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