

SOUTH AFRICA / JUDGMENT

Masindi v Ramco Motor Company (NCT/122119/2018/75(1)(b)) [2019] ZANCT 20 (12 March 2019) [2019] ZANCT 20

COURT

National Consumer Tribunal

BEFORE

H Devraj

CASE / FILE NUMBER

NCT/122119/2018/75(1)(b)

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

number: NCT/122119/2018/75(1)(b)
In

the matter between: TSHAMUNWE
HERRY
MASINDI APPLICANT
and
RAMCO
MOTOR COMPANY
CC RESPONDENT

Coram: Ms
H Devraj - Presiding Member
Date
of hearing: 1
March 2019
Date
of judgment: 12
March 2019

JUDGMENT**AND REASONS****THE PARTIES**

1. The Applicant is Tshamunwe Herry Masindi, an adult female (“the Applicant”).
2. The Respondent is Ramco Motor Company CC, a Close Corporation that is duly registered in terms of the Close Corporations Act No. 69 of 1984 of the Republic of South Africa; with registration number 1997/040774/23 (“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 did not oppose this matter; nor did it appear at the hearing. The Tribunal was satisfied that the service requirements in terms of Rule 30(1)(b) were met. The Applicant served the application on the Respondent’s via registered mail. On the date of the hearing the Presiding Tribunal member was satisfied that the notice of set down was adequately served on the Respondent and the matter proceeded on a default basis.

BACKGROUND

6. The Applicant is a consumer, who had repairs done to his vehicle. The Applicant received various SMS’s from the Respondent offering a free diagnostic, engine, electronics and gearbox check; as well as a discount on spares. On 28 March 2017, the Applicant took his vehicle to the Respondent for a free 28 point diagnostic check. The Applicant received the diagnostic report, which indicated that he needed to have his brake pads, shocks replaced and a few other items attended to. He paid an amount of R7881.00 for repairs to be done on his vehicle and an additional amount of R1133.00 for a service.
7. On 29 March 2017, the Applicant fetched his vehicle from the Respondent. While driving to Johannesburg, his vehicle broke down. When the Applicant opened the bonnet of his vehicle; he found that screws were missing from some parts; and that the water bottle was empty. The Applicant had to have his vehicle towed to a location close-by to the proximity of the Respondent. On 30 March 2017, the Respondent fetched the vehicle and took it to the workshop. The Respondent informed the Applicant that it had replaced the water bottle. The Applicant requested that the Respondent inspect the workmanship that had been

conducted. Upon inspection, the Applicant realised that the Respondent had placed water and oil in the water bottle of the vehicle. The Respondent informed the Applicant; that he now had to buy a new or second hand engine.

8. The Applicant requested to address this matter with the Manager. After not receiving any satisfaction from the Respondent; the Applicant filed a complaint with the Motor Industry Ombudsman of South Africa (“MIOSA”).
9. On 13 July 2017; MIOSA issued a finding in favour of the Applicant. MIOSA concluded that the Respondent must repair the Applicant’s vehicle at its own cost as well as any further consequential damages that may have been caused as a result of the repairs it had performed on the vehicle. The Respondent did not adhere to the MIOSA findings. The Applicant thereafter; referred his complaint to the National Consumer Commission.
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 1 March 2019 in Centurion. The Applicant represented himself.
12. The Applicant explained his case and detailed his reasons for the allegations of poor service and workmanship and alleged contraventions of the Consumer Protection Act. In particular, he submitted that the matter was of grave importance to him and that initially he required the Respondent to repair his vehicle to the required standard. However, in light of the redress process taking so long, he had no choice but to start repairing his vehicle at his own cost. He therefore needs to be refunded for the cost he had to incur to repair his vehicle as well as the additional costs he incurred for the towing of his vehicle and the storage costs.

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; the Commission; and to pursue it further with the Tribunal. His level of anxiety and frustration at not having the use of his vehicle and the cost associated with the repair to his vehicle; is plain to see.

15. The Applicant had identified a number of sections in the Consumer Protection Act which he argued are relevant to his matter. However, the relevant sections identified were section 54 and 55.

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. The Applicant alleged that his vehicle was in a good working condition, until such time the Respondent carried out repairs to the vehicle. The Applicant alleged that after oil and water was mixed in the water bottle of the vehicle, he was then informed by the Respondent that the engine needed to be replaced. This matter therefore clearly falls within the ambit of section 54 of the CPA.
18. 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. This can only be done once all the issues are fully ventilated before the Tribunal.
19. It is not clear what the current status of the Respondent is and whether the business is still operating. The Tribunal will also need to explore the issue of liability of the Respondent.

ORDER

20. Accordingly, the Tribunal makes the following order:

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

20.2. No order is made as to costs.

Dated at Centurion on this 12th day of March 2019

[Signed]

MS H DEVRAJ

PRESIDING MEMBER

[1] NCT/7142/2012/75(1)(b)&(2).

[2] See also Mbekeni v Freeway Toyota (NCT/36177/2015/75(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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