

SOUTH AFRICA / JUDGMENT

Mogorosi v Motor World CC t/a Spectacular Auto (NW13/2023) [2024] ZACONAF 7 (24 July 2024) [2024] ZACONAF 7

COURT

Consumer Affairs Court

BEFORE

KJP Kgomongwe, T. Rakoloka, L. Kortjas

CASE / FILE NUMBER

NW13/2023

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PROCEEDINGS BEFORE THE CONSUMER AFFAIRS COURT

FOR THE NORTH WEST PROVINCE, HELD AT RUSTENBURG

CASE NO: NW13/2023

In the matter between: -

Mr Ramolefe Mogorosi PLAINTIFF

And

Motor World CC T/ A Spectacular Auto

JUDGEMENT

Delivered on 24 JULY 2024

Corum: KJP Kgomongwe, T.Rakoloka ,L. Kortjas (concurring)

Plaintiff Represented by MrS.E Letsogo

Defendant Represented by Mr B Clemente

SUMMARY

Plaintiff purchased a Ford Ranger Motor Vehicle from the Defendants and after delivery complained of defects in motor vehicle which were attended by Defendants and Plaintiff took motor vehicle to another dealership for repairs and motor vehicle still not repaired to Plaintiff's satisfaction. Plaintiff demanded cancellation and refund.

ORDER

1. Plaintiff failed to discharge onus placed on him to prove that Defendant failed to remedy defects and accordingly Plaintiff claim is dismissed.
2. No order to costs.

INTRODUCTION

[1] PARTIES

- [1] The Plaintiff is Mr Mogorosi an adult male person residing at Mdeni Drive Rusternburg.
- [2] The Defendant is Motor World CC T/A Spectacular Auto conducting its business in Rusternburg.

The contract relates to the sale and purchase of a motor vehicle Ford Ranger by the Plaintiff from the Defendants. Where-after the delivery of the vehicle the vehicle manifested itself with defects and was returned to the seller for defects to be remedied allegedly without success and the Plaintiff then demanded cancellation and refund of monies paid.

On 02/11/2023 The parties failed to reach a settlement and matter proceeded to trial.

[2] PLAINTIFF CASE

Plaintiff Mr R Mogorosi testified that he on 30/09/2022 purchased a 2.2 Ford Ranger motor vehicle from the Defendants and traded in his NP200 motor vehicle. He saw the Ford Ranger motor vehicle on the Defendant's premises show room and offered to purchase it where-after he was accompanied by an employee of the Defendant to a premises nearby where the paperwork and purchase agreement and finance applications were processed and the deal was concluded. He then returned to the Defendants premises and he found the Ford Ranger vehicle he purchased parked outside the premises ready for the delivery to him. He took delivery of the vehicle and immediately realised that the motor vehicle was emitting smoke even from the engine. He drove the vehicle and returned it the following day. When he returned it, the vehicle was smoking and lacking power. The Plaintiff was instructed to take the motor vehicle for repairs to B C Performance and he left the vehicle there and it stayed for two to three weeks. When he made enquiries on the vehicle, he was informed they are still awaiting injectors to be delivered. He was later called to collect the vehicle and he went to fetch the vehicle and drove to work and it once more smoked and spilled diesel before he collected it. He again took the vehicle in that unsatisfactory state and the following day used the vehicle to travel to work and the travelled distance from his workplace to home is +12km.

According to the Plaintiff the Defendant failed to repair the vehicle and he in December 2022 took it to Ford Dealership and he informed the Defendants of his intentions to take vehicle to Ford Dealership and notwithstanding the Defendants request for him to bring the car back to them to repair the car he ignored the request and continued to allow Ford Dealership to repair the car as he believed they are the manufactures and will properly repair the vehicle.

The Ford Dealership continued to diagnose the vehicle and informed the Plaintiff that the Turbo needs to be replaced, Ford dealership replaced the turbo and they requested for the warranty from the Defendants who did deliver to details to Ford and a claim was lodged with the warranty provider. Plaintiff was informed by Ford dealership the total costs of repairs were R35 000,00(thirty five thousand rand) and that the warranty plan only paid R25 000,00 thus Plaintiff had to pay the R10 000,00(ten thousand rand) shortfall. Plaintiff demanded that the Defendant should pay the shortfall amount 'wherein the Defendant assisted and contributed RS 000,00(five thousand rand) being half the shortfall amount.

Plaintiff took delivery of the vehicle from Ford on 22nd February 2023 after he got the money to pay the outstanding RS000,00(five thousand rand). When collecting the vehicle from Ford it was still smoking. On 23rd February 2023 He was travelling to Delareyville but whilst at Koster the vehicle smoked and spilled oil. He stopped and called the insurance, and the vehicle was towed to his home.

He contacted Ford as he had a 2 years warranty on the turbo. When he returned to ford, he was then informed that the problem was not with the turbo but the engine.

According to the Plaintiff the longest distance he travelled with the vehicle was from Boshoeck which can be a total of +130Km and according to his testimony since purchase and taking delivery of the motor vehicle the total cannot kilometres he travelled with the vehicle would not be more than 412 Kilometres and at all times the vehicle was travelling at a speed below 70km/ per hour as it lacked power.

The second witness to testify in the Plaintiff's case was Mr William Dekker a mechanical experts who testified that he in September 2023 conducted an inspection on the Plaintiff Ford Ranger motor vehicle and did general inspection on the vehicle and its engine.

Upon inspection the cylinder heads and water parts he noticed rust and that at some stage the vehicle might have overheated due to being driven without water and antifreeze. According to him vehicle was in a good working condition but may need the engine to be overhauled.

[3]. DEFENDANTS CASE

Mr Johannes Conelius van Tonder testified in the Defendants case and he is the owner of Motor World CC T/A the Defendant company confirmed that they sold the Ford Ranger motor vehicle to the Plaintiff whereupon purchase the Plaintiff inspected and test drove the motor vehicle. The vehicle was delivered to him in good working condition, and further offered the Plaintiff a 2 years mechanical warranty through Insure Africa. Two weeks after the sale the Plaintiff came to collect the registration certificates of the motor vehicle without any complaints.

Plaintiff contacted them in October 2022 that the vehicle had a problem whereupon he informed him to bring the vehicle back to them and BC performance collected the vehicle and took it to their workshop and diagnosed the problem on the injectors and they suspected that contaminated diesel might have been used on the vehicle. The vehicle was repaired and claim lodge with the insurance. At the time the vehicle had travelled 191226Km in total. The vehicle was delivered to the Plaintiff again in good working condition.

The next time they heard of complaint on the motor vehicle from the Plaintiff was in December whereupon they inspected the vehicle and indicated that they might have to open the engine to determine what the real problem might be and suggested that as it is December period and most factories are closing it will not be advisable to work and the car and suggested to wait until January. The Plaintiff took the vehicle and left.

To Defendants were surprised he received a call from one Nadia at Ford dealership asking for the particulars of the insurance warranty and that they needed to replaced the Turbo. Notwithstanding the Defendants warnings that the problem may not be with the Turbo and for the Plaintiff not proceed with such repairs they continued to replace the Turbo and claimed from the insurance where there was a shortfall of R10 000,00(five thousand rand) where he still continued to contribute R5000,00 (five thousand rand). He thereafter only heard from the Plaintiff that the vehicle still has problems on 27/02/2023 where they presented him with the quotation from Ford where the Turbo was done and the kilometres travelled on the vehicle was 192490 Kilometres.

Defendants arranged that the vehicle be collected from Ford dealership to their workshop performance. When the engine was collected it had a knocking sound on the engine and they contacted the Plaintiff for permission to open the engine to determine the cause of the problem on the engine. Permission was granted and the repair costs amounted to R51 000,00 where-after the insurance warranty only approved R21 000,00 and refused to pay the full amount as there was a previous misdiagnosed claim an the Turbo for the R35 000,00.

Defendant maintained that he at all instances the vehicle was returned to them they attended to and attempted to remedy the defects and complaints on the vehicle notwithstanding that even when contaminated diesel was used on the vehicle he attended to remedy the defects. He denied that the Plaintiff at any stage demanded cancellation of the agreement and refund of monies paid.

The second witness to testify in the Defendants 'case is Mr Shaun Mynhardt who confirmed that he is a the workshop foreman at BC performance and confirms that he attended to the Plaintiffs vehicle when it was brought to workshop and they replaced injectors and that when it was again returned they suggested the engine to be opened where-after the Plaintiff took the vehicle and was later returned to them to open the engine after collecting it from Ford dealership and the engine had to be reconditioned.

[4]. APPLICABLE LAW

SECTION

55. (1) This section does not apply to goods bought at an auction, as contemplated in section 45.
- (2) Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that-
- (a) are reasonably suitable for the purposes for which they are generally intended;
 - (b) are of good quality, in good working order and free of any defects;
 - (c) will be usable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
 - (d) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.
- (3) In addition to the right set out in subsection (2)(a), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier-
- (a) ordinarily offers to supply such goods; or
 - (b) acts in a manner consistent with being knowledgeable about the use of those goods, the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated.
- (4) In determining whether any particular goods satisfied the requirements of subsection
- (2) or (3), all of the circumstances of the supply of those goods must be considered, including but not limited to-
- (a) the manner in which, and the purposes for which, the goods were marketed, packaged and displayed, the use of any trade description or mark, any instructions for, or warnings with respect to the use of the goods;
 - (b) the range of things that might reasonably be anticipated to be done with or in relation to the goods; and
 - (c) the time when the goods were produced and supplied.
- (5) For greater certainty in applying subsection (4)-
- (a) it is irrelevant whether a product failure or defect was latent or patent, or whether it could have been detected by a consumer before taking delivery of the goods; and
 - (b) a product failure or defect may not be inferred in respect of particular goods solely on the grounds that better goods have subsequently become available from the same or any other producer or supplier.
- (6) Subsection (2)(a) and (b) do not apply to a transaction if the consumer-

- (a) has been expressly informed that particular goods were offered in a specific condition; and
- (b) has expressly agreed to accept the goods in that condition, or knowingly acted in a manner consistent with accepting the goods in that condition.

[5]. EVALUATION OF THE EVIDENCE

On the evidence presented before court and documents filed it is not in dispute that there was a transaction for the purchase of Ford Ranger Motor Vehicle between the Defendant and the Plaintiff. The defendants delivered the purchased motor vehicle. Plaintiff complained of certain defects on the vehicle mainly smoking and lack of power.

Upon the vehicle being returned to the Defendants the Defendants did oblige and attempt to remedy the defects on the delivered motor vehicle.

The Plaintiff at an instance and without the Defendants permission took the motor vehicle to another dealership to wit Ford to do repairs on the vehicle. Notwithstanding same the vehicle still had mechanical problems and was again returned to the Defendant who once more showed willingness and co-operation to assist paying half the amount of the on Ford dealerships claim on the misdiagnosed turbo repairs on the claim to have the plaintiff vehicle repaired and in a good working condition.

The onus rests on the plaintiff to show that there was a breach on the part of the Defendant to remedy any defective performance after delivery of the motor vehicle.

When one evaluates the evidence presented the Plaintiff has failed to discharge this onus and his evidence was riddled with several

discrepancies and unsatisfactory accounts of events amongst them the following:

- The Plaintiff claims to just have seen the vehicle on the floor or show room at the Defendants premises and agreed to purchase it. He denies that he went look at and to inspect the car nor being afforded an opportunity to go into the motor vehicle to see the interior and/or the kilometres the vehicle already travelled well knowing he was buying a second hand motor vehicle even any lay person will be curious to look and inspect the vehicle he intends purchasing including seeing the interior and the exterior of the vehicle.
- CONTRACT SIGNED
- Contract to the signed offer to purchase Clause 1.3 Plaintiff signed and confirmed that he was offered and conducted a road test.
- Clause 1.4 plaintiff acknowledges to have had the opportunity to inspect and performed the inspection on the motor vehicle purchased.

The above is not in line with the Plaintiff's evidence.

[6]. REGARDING WEAR AND TEAR

Clause 2.1 of the agreement signed by the parties the Plaintiff acceded to the following condition "I hereby agree to accept that the vehicle being a used vehicle described as above has the wear and tear that accounts with a vehicle with this age and mileage. I therefore have no expectations that the vehicle can or will compare with a new vehicle. I accept the certificate of road worthiness will be issued in respect of the vehicle by a competent and duly registered authority and that the standard of the vehicle will be as required of such certificate as required by law.

2.2. I Accept that the vehicle is of the quality 21d in working order and in the condition as set out above. I accept that the vehicle will be usable and durable for reasonable period only having regards to the following:

2.1.1. My choice of usage of the vehicle as selected by myself in the Offer to Purchase.

2.1.2. The age and extensive use that the vehicle has already been subjected to and that due to the wear and tear, age and usage of the vehicle that the components may fail after delivery of the vehicle.

2.1.3. The use to which the vehicle was normally put to.

2.1.4. The standard of maintenance of the vehicle.

2.1.5 The existing level of wear and tear.

Further to the above conditions the contract signed by the parties had the following clause.

4. The right to return the vehicle.

4.1.1. My right to return the vehicle would be subjected to sec 56 (2) in reference to the Consumer Protection Act 68 of 2008.

4.1.2. The refund of the purchase price would be subject to Sec 20 (5) and (6) and to the rights and obligations of the relevant Finance House/Credit Provider under the National Credit Act (in the event that the purchase is financed by a Credit Provider).

4.1.3. The value of the vehicle will have been reduced and diminished and that I will be liable to the Seller for the difference between the purchase price paid by me in terms of the offer to purchase and the price at which the vehicle is sold by the Seller to another P1:1rchaser as well as the costs to again road worthy the vehicle and take it into the seller's stock.

[7]. EVALUATION OF PLAINTIFF EVIDENCE AND PROBABILITIES

Plaintiff claims that upon conclusion and signing of the paperwork he went back to the Defendants premises and found the vehicle parked outside ready for collection and delivery. He collected the vehicle and notwithstanding that he saw the vehicle smoking excessively he nonetheless took the vehicle and claim that he only came the following day to complain.

Plaintiff aver that when he purchased the vehicle he was not informed of any warranty and did not know of the warranty paid at any stage. Surprisingly when he took the vehicle to Ford dealership for repairs a warranty was provided to Ford dealership for them to continue doing repairs as according to the Plaintiffs instructions.

The distance claimed to be travelled using the vehicle by the Plaintiff after he took delivery after the purchase of the vehicle contradicts his evidence and records presented in court. On 31st August 2022 purchased invoice reflect the vehicle sold with 185 000 kilometres and when it was later returned to Defendant on 14th September 2023 the kilometres reads 196065kmin total 11065 were travelled. whereas Plaintiff claims to have driven the vehicle for not more than ±_412 kilometres.

Plaintiff admits that he own his accord and notwithstanding the Defendants caution not to take the vehicle to another mechanic or dealership he continued to do so and thus the Defendant cannot be held liable for misdiagnosed repairs done on the vehicle by Ford dealership.

Defendants evidence on the other hand was cohesive and conforms that sale of the vehicle they showed willingness to fulfil his obligations to remedy the defects on the plaintiff motor vehicle.

Both mechanical experts concur on what defects are on the vehicle and that the vehicle was in a working condition and that the engine needs to be reconditioned which diagnosis was also done by both experts.

The question arising in the current case is then who should be held liable for the payment of the shortfall of the amount required to recondition the vehicle.

It is this courts view that had the Plaintiff not taken the motor vehicle to Ford dealership and offered the defendants opportunity to repair and remedy the defects on the vehicle there would not have been wasted costs of the misdiagnosed turbo, that was replaced by Ford. The warranty plan which the plaintiff denied knowledge of its existence would on behalf of the Plaintiff would have covered the full costs of repairs on the vehicle.

According to the Plaintiff and in his own testimony he was not a first time car owner/buyer as he also traded in his NP200 vehicle which according to him he knows the mechanics and the functioning of motor vehicle. It is in this court's mind surprising that prior to taking delivery of the Ford Ranger he would not have made a single check or inspection mileage nor look into their interior or condition of the vehicle as he claims he was not allowed to do same. Had that been the case he had failed to satisfy himself of the quality of the goods he is purchasing which fact is not consistent with his testimony before court inclusive of the agreement concluded between him and the Defendants the terms of which take recognition of the National Consumer Protection Act and the National Credit Act and its prescripts.

This court can accordingly find no breach of failure of the part of the Defendant to remedy the defects on the Plaintiff's vehicle as alleged. The Plaintiff has not discharged the onus placed on him to prove on the balance of probabilities failure by the Defendant to honour his obligations in terms of the Consumer Protection Act.

Accordingly, the following order is made:

5. Plaintiff claim is dismissed.
6. No order to costs is made.

DATED AT RUSTENBURG ON THIS THE 24TH OF JULY 2024.

KJP KGOMONGWE

CHAIRPERSON

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