

SOUTH AFRICA / JUDGMENT

Motlhoiwa v Lin t/a Afrika Spares (NW20/2023) [2024]

ZACONAF 11 (16 February 2024)

[2024] ZACONAF 11

COURT

Consumer Affairs Court

BEFORE

KJP Kgomongwe, J Rakoloka, Raborife

CASE / FILE NUMBER

NW20/2023

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PROCEEDINGS BEFORE THE CONSUMER AFFAIRS COURT FOR THE

NORTH WEST PROVINCE, HELD AT MMABATHO

CASE NO: NW20/2023

In the matter between: - REVEREND SEGOGWANE MOTLHOIWA PLAINTIFF And MT LIN T/ A
AFRIKA SPARES DEFENDANT

JUDGEMENT

Delivered on 16 February 2024

Corum: KJP Kgomongwe (J. Rakoloka and and Raborife concurring

Plaintiff: Consumer Protector

Defendant: Absent

INTRODUCTION

PARTIES

1. The Plaintiff is Reverend Motlhoiwa an adult female person residing at Onkgopotse Tiro Street, Mmabatho, North West.
2. The Defendant is Mr Lin Trading as Afrika Spares at Carrington Street, Mmabatho.
- 3.

BACKGROUND

The contract relates to the purchase of power steering rack for a Toyota Runex Motor vehicle in the amount of R4 390.66. The Plaintiff paid the full purchase price and the Defendant delivered a standard steering rack to the Plaintiff which was returned to the Defendants as it did not serve purpose of which it was intended.

4. SUMMONSES AND SERVICE ON SERVED THE DEFENDANT

A complaint was then registered with the office of the unfair business practices whereafter the Defendant on 18/12/2023 was served with summonses to appear before court on 22/01/2024 on which date the Defendant failed to appear and no reason was furnished for non-appearance.

The matter was postponed to 16/02/2024 and the Defendant was again on 22/01/2024 duly served with summonses and notice to appear before court on 16/02/2024 still for reasons unknown to the court he failed to appear before court.

5 On 16/02/2024 the matter appeared before court and once more for reasons unknown to the court the Defendant failed to present

themselves before court and the consumer protector brought an application for judgement to be granted in default as the defendant

failed to honor the summonses and present themselves before court.

6. Hearing and evidence presented on 16/02/2024

7. Segogwane Refuse Motlhoiwa testified under oath to the following:

On 22/05/2023 she proceeded to the Defendant Afrika Spares to purchase a Toyota Corolla 1.4 power steering wheel rack. The purchase price was R4 500.00 which she paid to Defendant using her debit card and the steering wheel rack was delivered to her.

The Plaintiff on 26th June 2023 took the steering wheel rack and her motor vehicle to Auto wheels for the fitment of the part into her motor vehicle. Upon installation it was discovered that the steering wheel rack supplied by the Defendant was normal Steering rack and not the power steering rack as ordered and purchased by the Plaintiff.

The Plaintiff returned the steering wheel rack to the Defendant and demanded replacement and/or refund of the R4 500.00 paid. The

Defendants informed her that they do not have the power steering wheel rack and explained to her that they can only take the normal

steering wheel rack back and only refund her after they have sold the part further that they had a prospective buyer of the steering rack from Botswana whereupon they expected her to purchase the manual steering rack. They suggested to the plaintiff to take and keep with her the supplied normal steering wheel rack until they got a buyer whereafter they will contact her and only then will they refund her the R4 500.00 paid.

The Plaintiff refused to accept the said arrangements and left the normal steering rack with the Defendant cancelled the agreement and demanded refund of the monies she paid.

Defendant failed to replace the steering rack and further failed to refund her the R4 500.00 she paid and plaintiff prays for an order for the refund of R4 500.00 paid.

8. APPLICABLE LAW, EVALUATION OF EVIDENCE

9. SECTION 55 OF consumer protection act 68/2008 PROVIDES FOR CONSUMER'S RIGHTS TO SAFE, GOOD QUALITY GOODS

- (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 useable 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.

According to the evidence presented the steering wheel rack supplied by the Defendant to the Plaintiff is not reasonably suitable for the purpose for Plaintiff's intended use.

SECTION 56 OF CPA PROVIDES FOR IMPLIED WARRANTY AND STATES THAT:

- (1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.
- (2) Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either-
 - (a) repair or replace the failed, unsafe or defective goods; or
 - (b) refund to the consumer the price paid by the consumer, for the goods
- (4) The implied warranty imposed by subsection (1), and the right to return goods set out in subsection (2), are each in addition to-
 - (a) any other implied warranty or condition imposed by the common law, this Act or any other public regulation; and
 - (b) any express warranty or condition stipulated by the producer or importer, distributor or retailer, as the case may be

On the evidence presented the law make provision for the implied warranty. Defendant to supply goods to comply with the standards and requirements as provided in Section 55.

The Plaintiff has within six months after delivery of the wrongly supplied steering wheel rack returned it to the Defendant and she is thus without penalty entitled to receive the R4 500.00 paid.

The consumer has a right to without penalty to return to the Plaintiff the wrongly supplied steering wheel rack and to receive the refund of amounts paid to the Defendant. Supplier and condition to refund the consumer only after he has sold the wrongly delivered steering rack offends against the spirit of the consumer protector Act which aims at protecting the rights of the

consumers and such clause is also in conflict with the prescript of Section 51(1) as such agreement to refund upon resale of the wrongly delivered steering rack purports to waive and deprive the Plaintiff rights in terms of the Consumer Protector Act.

THE ORDER

Accordingly, the following order is made:

1. The agreement between plaintiff and Defendant is ordered cancelled.
2. Defendant ordered to retain the steering wheel returned to them.
3. Defendant is ordered to pay to the Defendant R4 500.00 within 30days from the date of this order.
4. No order to costs is made save for the costs to be incurred by the Plaintiff to enforce this order.

DATED AT MMABATHO ON THIS THE 16th Day OF February 2024.

KJP KGOMONGWE

CHAIRPERSON

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