

SOUTH AFRICA / JUDGMENT

Nxuma v Sedidi (FSCAC 2020/11-5)

[2020] ZACONAF 4 (6 November 2020)

[2020] ZACONAF 4**COURT**

Consumer Affairs Court

BEFORE

NM Bahlekazi

CASE / FILE NUMBER

FSCAC 2020/11-5

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Source record**FREE****STATE CONSUMER AFFAIRS COURT****HELD****AT BLOEMFONTEIN****CASE****NO: FSCAC 2020/11-5****In**

the matter between:

MZWANDILE
EDDIE NXUMA
PLAINTIFF
And
TUMELO
SEDIDI
DEFENDANT

JUDGMENT

This matter appeared in this court on 6 November 2020. The plaintiff appeared in person, the defendant was not in court. The court requested the consumer protector to look whether the defendant was not lost within the building and to also shout his name, and this was done still the defendant was not present. The consumer protector applied to the court that a default judgement be given against the defendant.

The consumer protector furnished the court with a Sherriff return of service which indicated that the defendant was given the subpoena personally to appear in court. Having considered the subpoena and the return of service, the court decided that the matter will proceed in the absence

of the defendant. Plaintiff was then called by the consumer protector to give evidence in his case. Briefly the testimony of the plaintiff was to the fact that he had booked his car with the defendant on 18 August 2024 repairs. He paid an amount of R4850 for the repairs. He was later called to come and pick up the car as it was said that the car had been repaired.

He stated that the defendant and himself took the motor vehicle for a test drive but on coming back, they noticed that the oil light kept on flickering. The defendant then told the plaintiff to take the car home and bring it back the following day so that they can try and fix it. The car was eventually brought to the workshop of the defendant and the defendant had said that the problem was a turbo that had broken, plaintiff bought the turbo, which was then replaced but still the problem persisted. At this point the vehicle had no power and was emitting white smoke from its exhaust. Plaintiff later learnt that one of the employees of the defendant had taken the vehicle overnight and crashed the vehicle whilst it was still in the possession of the defendant. .

Plaintiff applied to the court for an order awarding damages for his vehicle. Further for an order that he should be refunded the amount that he had paid for the repairs to the vehicle that was not fixed. The court informed the plaintiff that it shall give an order that will be in compliance with the provisions of the consumer protection act, which is an enabling act for the court. In terms of the enabling act which is a consumer protection act, in particular Section 54 (2) (a) (b) which provides as follows;

- (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 supplied;

Or

- (b) refined 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.

Having considered the evidence given by the plaintiff and taken in consideration the provisions of the act, the court can only order a refund of the amount that was paid for the repairs, which repairs were not up to standard. The court cannot enter into the terrain of damages as the act does not make provision for this court to adjudicate in matters of damages. The court then advised to the plaintiff to approach the magistrates court and claim for damages.

The judgement of the court is as follows;

1. the defendant is ordered to refund the plaintiff the amount of R4850;
2. the defendant is further ordered to pay an amount of R496.80 being sheriff fees paid for serving the summons on the defendant.

Dated 6 November 2020

Adv NM Bahlekazi

Chairperson of the Consumer Court

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