

SOUTH AFRICA / JUDGMENT

Rodgers v Motortown Western Province CC t/a Motorama (NCT/279189/2023/75(1)(b)) [2024] ZANCT 12 (9 July 2024) [2024] ZANCT 12

COURT

National Consumer Tribunal

BEFORE

S Hockey, MC Peenze, Z Ntuli

CASE / FILE NUMBER

NCT/279189/2023/75(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case No: NCT/279189/2023/75(1)(b)

In the matter between: KEVIN EDMUND ROGERS APPLICANT And MOTORTOWN WESTERN
PROVINCE CC RESPONDENT T/A MOTORAMA

Coram:

Mr S Hockey

- Presiding Tribunal member

Dr MC Peenze - Tribunal member

Ms Z Ntuli

- Tribunal member

Date of the hearing: - 04 July 2024

Date of judgment:

- 08 July 2024

JUDGMENT AND REASONS

THE PARTIES

1. The applicant in this matter is Kevin Edmund Rogers (the applicant). The applicant is a consumer as defined in section 1 of the Consumer Protection Act, 2008 (the CPA). At the hearing of this matter, the applicant was represented by Ms Saeedah Salie, an attorney from BPP Law Attorneys.
2. The respondent is Motortown Western Province, trading as Motorama (the respondent), a close corporation registered as such under the company laws of the Republic of South Africa and a supplier in terms of section 1 of the CPA.

TERMINOLOGY

3. A reference to a section in this ruling refers to a section of the CPA, and a reference to a rule refers to the Rules of the National

Consumer Tribunal (the rules)[1].

APPLICATION TYPE AND JURISDICTION

4. The applicant first referred his complaint to the National Consumer Commission (the NCC), who, after an assessment thereof, concluded on 20 October 2022 that the redress sought by the applicants could not be provided in terms of the CPA.
5. Thereafter, the applicant referred this matter to the National Consumer Tribunal (the Tribunal) in terms of section 75(1)(b). This section provides that if the NCC issued a notice of non-referral as it did in the present matter, the complainant may refer the matter directly to the Tribunal, with leave of the Tribunal. The Tribunal granted such leave on 17 November 2023.
6. Accordingly, the Tribunal has jurisdiction in terms of section 73(2)(b) and section 27(a)(ii)[2] of the National Credit Act 34 of 2005 (the NCA) to consider this application.

HEARING OF THE MATTER ON AN UNOPPOSED BASIS

7. This matter was first set down for hearing on 30 January 2024 but was postponed as the Tribunal was not persuaded that the application was properly served on the respondent.
8. On 4 April 2024, the applicant caused the papers to be served personally on the sole member of the respondent by the sheriff. The respondent filed a service affidavit wherein it confirmed the aforesaid. It also confirmed that it sent the application by registered post to the applicant's business address on 21 June 2023 and attached a track and trace report from the post office, which was obtained on 31 January 2024 (the day after the matter was postponed). The track and trace report indicates that the respondent collected the parcel from the post office on 3 November 2023. The application was, therefore properly served on the respondent.

9. In terms of rules 13(1) and (2), a respondent to an application or referral to the Tribunal may oppose the matter by filing an answering affidavit within 15 business days of receipt of the application or referral.
10. The respondent failed to file an answering affidavit within the prescribed period or at all, and the matter was accordingly set down for hearing on an unopposed basis.
11. In terms of rule 13(5), any fact or allegation in an application or referral not specifically denied or admitted in an answering affidavit will be deemed to have been admitted. Since no answering affidavit has been filed, the allegations by the applicant must be deemed to have been admitted by the respondent.

BACKGROUND

12. The applicant purchased a Renault Capture 900T (the vehicle) from the respondent and paid its purchase price of R120 000.00 into the respondent's bank account on 10 December 2021.
13. The vehicle was delivered to the applicant at his place of residence on 13 December 2021. The respondent informed the applicant that the vehicle was overheating and advised the applicant to take the vehicle to a mechanic for repairs and undertook to pay for the repairs and the parts needed for the repairs. The respondent recommended a mechanic for the applicant to take the vehicle to.
14. The applicant accordingly took the vehicle to the recommended mechanic for repairs. After the mechanic informed the applicant that the vehicle had been repaired, the applicant collected the vehicle from him.
15. On 15 January 2022, the vehicle overheated again, and the applicant had it towed back to the mechanic. After months of back-and-forth, during which the applicant bought parts for the vehicle, the mechanic failed to repair it. The respondent failed to reimburse the applicant for the costs he incurred.
16. Finally, the applicant requested a refund of the purchase price he paid for the vehicle from the respondent, but the latter refused. The respondent failed to respond to the applicant's communications.
17. The applicant referred his complaint to the Motor Industry Ombudsman of South Africa (MIOSA), who concluded that there was no prospect of resolving the matter.
18. Thereafter, the applicant referred his complaint to the NCC, who, after an assessment, concluded that the redress sought by the applicant could not be provided in terms of the CPA. The NCC noted that the respondent could not be traced using the details provided by the applicant.
19. The applicant lodged this matter with the Tribunal, requesting that he be reimbursed the purchase price of the vehicle and all the financial costs incurred to have it repaired.

THE RELEVANT LEGAL PROVISIONS

20. Section 56(2)(a) provides that a consumer may, within six months after delivery of any goods to it, 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. The supplier must then, at the direction of the consumer, either repair or replace the failed, unsafe, or defective goods.[3] Subsection (b) provides for the option by the consumer to require a refund of the purchase price paid by the consumer for the goods.
21. Section 56(3) provides that 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 either replace the goods or refund the consumer the price paid for the goods.
22. Section 55(2)(b) and (c) provides that, except to the extent contemplated in subsection (6), the consumer has a right to receive goods that are of good quality, in good working order, and free of any defects and will be usable and durable for a reasonable period of time, having regard to the use to which they would normally be put and all the surrounding circumstances of the supply.
23. Subsection 55(6) provides that subsections (2)(a) and (b) do not apply to a transaction if the consumer has (a) been expressly informed that particular goods were offered in a specific condition and (b) expressly agreed to accept the goods in that condition or knowingly acted in a manner consistent with accepting the goods in that condition.
24. In terms of section 4(2)(b)(i) and (ii), in any matter brought before the Tribunal in terms of the CPA, the Tribunal must promote the spirit and the purpose of the CPA and make appropriate orders to give practical effect to the consumer's right of access to redress, including but not limited to any order provided for in the CPA and any innovative order that better advances, protects, promotes and assures the realisation by consumers of their rights in terms of the CPA.

ANALYSIS

25. It is undisputed that the respondent delivered a defective vehicle to the respondent, which was repaired by a mechanic which the respondent recommended. The respondent also took responsibility for the costs of the repairs. The Tribunal is of the view that the repairs were done at the respondent's instance.

26. It also cannot be disputed that the aforesaid repairs did not address the problem, as the same problem surfaced shortly after the vehicle was returned to the applicant after the failed repairs. This was well within the three months contemplated in section 56(3). The vehicle was returned to the same mechanic recommended by the respondent, but he failed to repair it. The respondent also failed to pay for any repairs or parts needed for it or reimburse the applicant for the costs he incurred in this regard.
27. In the circumstances, the Tribunal is of the view that the respondent contravened section 56(3) read with section 55(2)(a), (b), and (c) and that such contravention should be declared prohibited conduct in terms of section 150(a) of the NCA. The applicant is entitled to a refund of the purchase price for the vehicle. He had no or very little use of the vehicle since its purchase.
28. As for the costs that the applicant incurred for parts needed by the mechanic, such costs are for damages that the Tribunal is not authorised to order. The applicant's attention is drawn to the provisions of section 115, in terms of which he may apply for a certificate from the Chairperson of the Tribunal that may be used in any civil proceedings against the respondent. Such a certificate will be sufficient proof of its contents.

THE ORDER

29. In the result, the following order is made:
- 29.1. The respondent has contravened section 56(3) read with section 55(2)(a), (b) and (c).
- 29.2. The aforesaid contravention is declared to be prohibited conduct.
- 29.3. The respondent shall refund the applicant the purchase price paid for the vehicle in the sum of R120 000.00. The respondent shall make this payment into a bank account elected by the applicant within 30 calendar days from the date of the issuing of this judgment.
- 29.4. There is no order as to costs.

S Hockey (Presiding Tribunal member)

Tribunal members Dr M Peenze and Ms Z Ntuli concur.

[1] GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters

before the National Consumer Tribunal, 2007 (Government Gazette No. 30225).

[2] This section provides that the Tribunal or a member of the Tribunal acting alone in accordance with the NCA, or the CPA may adjudicate

in relation to any allegations of prohibited conduct.

[3] See section 53 for the definitions of a "defect", "failure" or the concept of "unsafe".

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