

SOUTH AFRICA / JUDGMENT

Toyota South Africa (Pty) Ltd v Baobab Kiosk & Vulstasie CC (A3021/2014)

[2015] ZAGPJHC 328 (13 May 2015)

[2015] ZAGPJHC 328

COURT

South Gauteng High Court, Johannesburg

BEFORE

M B Mahalelo, B Mashile

CASE / FILE NUMBER

A3021/2014

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: A3021/2014

Reportable:

NO

Of

interest to other judges: NO

Revised.

13/5/2015

In

the matter between:

TOYOTA

SOUTH AFRICA (PTY) LTD

Applicant

REG

NUMBER: 1946/020429/07

and

BAOBAB

KIOSK & VULSTASIE

CC Respondent

REG

NUMBER: 2003/065128/23

JUDGMENT**MAHALELO AJ**

- [1] This is an appeal against the judgment of the additional Magistrate of Randburg. The appellant was the defendant in the court aquo and the respondent was the plaintiff.
- [2] Prior to dealing with the merits it is important to deal with application for condonation of the late filing and prosecution of the appeal. The powers of the court to grant condonation have been set out on innumerable occasions more specifically in the decision of A Hardroit (SA) (Pty) Ltd v Behardien and Others (2002) 231 lf 1229 (LAC) at 1231-3. The court has an unfettered discretion to grant condonation and the court will look at all circumstances of each case.
- [3] The appellant was granted condonation in the present case.

THE MERITS OF THE APPEAL

- [4] Briefly stated the facts are as follows:-

The respondent issued summons against the appellant in the court aquo for repayment of an amount of R45 324.00 being the money respondent had to pay to Tambotie Toyota for repairs done to his

motor vehicle which the respondent claimed should have been covered under the appellant's manufacturer's warranty.

- [5] Gerhadus Johannes Van Niekerk (Van Niekerk), the only witness for the respondent testified as follows:-

He is a mechanic by profession. He is also a business man. On the 9th of November 2009 the respondent represented by him purchased a Toyota Hilux motor vehicle from Monument Toyota.

- [6] The vehicle was purchased as new and was financed by Toyota Financial Services with a Service Care Plan and a 3 year or 100 000

kilometres mechanical and spare warranty.

- [7] On the 29 September 2010 the vehicle was involved in an accident and subsequently repaired by De Beers Panel beaters.
- [8] On the 3 December 2010 the vehicle was serviced by Monument Toyota with an odometer reading of 61038 kilometres.
- [9] On the 3 January 2011 with only 4000 kilometres after its last service the vehicle broke down en route to Ellisraus and was

subsequently towed into the nearest dealer, Tambotie Toyota for repairs. Upon inspection carried out by Toyota South Africa (Pty)

Ltd, it was found that the repairs which needed to be done on the vehicle did not fall under the warranty and thus the respondent's

claim was repudiated.

[10] Van Niekerk testified further that on the same day he bought three other Hilux bakkies from the same dealership and that as a businessman he owns a fleet of about 48 cars. That upon delivery of the motor vehicle in issue the sales person (Le Roux) informed him that the vehicle was under guarantee and that he was to bring the vehicle in for service after every 10 000 km. According to him, he was not made aware of the exemptions contained in the warranty document which formed part of the contract.

[11] Roelf Jacobus Botha (Botha) testified on behalf of the appellant that he is a qualified mechanic and a diagnostic technician employed as a workshop foreman at Tambotie Toyota in Lephalale. He has been employed as such since 2007. He has 18years experience and specialises in mechanical repairs to Toyota vehicles.

[12] During January 2011 he was on duty when the respondent's vehicle was towed into Tambotie Toyota. During the inspection of the vehicle he found the following:-

[12.1] The head gasket was blown.

[12.2] Upon examination of the damage to the engine no traces of water could be found in the cooling system which suggested that the vehicle was driven with very little or no water/ coolant at the time of it breaking down.

[12.3] The damage was severe in that the number one cylinder and piston had melted, which was evidence that the vehicle was driven with little or no water / coolant and this can be attributed to negligence on the part of the driver and or owner who failed to ensure that there was enough water / coolant in the radiator prior to the use of the vehicle.

[12.4] The water-pump and thermostat were in a working order, he had observed that the vehicle's radiator had been recently replaced and there was evidence that the vehicle was involved in a front collision accident as he had also observed that the headlights,

bumper, grill and front cradle were replaced.

[13] By virtue of his diagnosis the damage to the Respondent's vehicle fell outside the warranty as there were no parts failure and there was overwhelming evidence to suggest that the vehicle was driven without water or coolant in the cooling system.

[14] Joseph Francious Pretorius (Pretorius) also employed by Tambotie Toyota testified on behalf of the appellant that he is a qualified

mechanic employed as a workshop manager. He has 7 years experience. During January 2011 when respondent's vehicle was brought into Tambotie Toyota for repairs he inspected the damage on it and diagnosed the vehicle. He confirmed that the vehicle was involved in an accident as the radiator, the front lights and the cradle were newly replaced. According to him the damage to the engine could have been a result of the negligence of the driver by failing to check the water or coolant in the vehicle before use or that the radiator was not properly fitted during replacement in that the system was not properly bled.

- [15] Gerhadus Jacobus Le Roux (Le Roux) another witness for the appellant testified that he is employed by Monument Toyota as a new sales consultant. During the period 9 November 2009 he sold four vehicles to Van Niekerk. All four of them were delivered at the same time at Van Niekerk's work place. Le Roux testified further that during the handing over of the vehicles he explained all the features of the vehicles to Van Niekerk and also went through the warranty books and service books with him. According to him he explained the warranty conditions to Van Niekerk. He also followed up with Van Niekerk the following day after delivery to find out if there were any questions or queries as this is standard procedure. During cross examination it was put to Le Roux that he did not explain the warranty booklet to Van Niekerk, and that as a confirmation of this he did not tick the deal file during delivery. Le Roux was adamant that the warranty booklets were explained to Van Niekerk at the time he handed the vehicles to him.
- [16] The last witness to testify on behalf of the appellant, Percy Joseph Hault (Hault) testified that he is employed by Toyota South Africa as a qualified technical manager for the North Region. He is also a qualified motor mechanic with 11years experience. His duties include assessing, diagnosing and supervising repairs of Toyota motor vehicles. He oversees dealerships in that he visits dealerships on monthly basis to help assess, diagnose and advise dealers of steps to take when in doubt and to make sure that dealers work according to specifications.
- [17] Hault further testified that he first became aware of the matter when summons were issued against the appellant. He then interviewed Botha and Pretorius and also requested the respondent's vehicle's job card as well as reports made to the respondent concerning the vehicle. After all investigations were done by him he concluded that the damage to the respondent's vehicle was not due to any part failure and that the damage could have been caused by negligence of the driver by not filling the necessary coolant to specification level or that the repairs done to the vehicle previously by a non-approved repairer were not done according to the standards required by Toyota, therefore according to him the repairs undertaken on the Respondent's vehicle could not be honoured under the warranty.

- [18] It is common cause that the Respondent's vehicle was purchased as a new vehicle from Monument Toyota on 9 November 2009, that the Respondent's claim is based on a manufacturer's new vehicle warranty, that the warranty contained exemption clauses, that Respondent's vehicle was involved in an accident and was repaired by a non-approved Toyota repairer and that on 3 December 2010 its engine packed up.
- [19] There are two issues to be decided in this appeal. The first is whether the respondent is bound by the terms of the warranty and secondly whether the warranty exemption clause is against public policy.
- [20] The warranty referred to contains general exclusions which reads as follows:-
- The conditions of this warranty shall not apply to:-
- [20.1] A vehicle which has been subjected to negligence, misuse, ignorance, accident, alteration or modification.
- [20.2] A vehicle repaired or serviced by other than an authorized Toyota distributor or dealer.
- [20.3] A vehicle which has been subjected to any form of competition.
- [20.4] Normal maintenance and service items.
- [20.5] Problems which may arise from use of parts and accessories other than Toyota approved parts and accessories.
- [20.6] Vehicles not maintained and serviced as per the prescribed maintenance schedule by an authorised Toyota dealer or distributor.
- [20.7] Any of those components listed in the owner's obligations sections regarding maintenance service.
- [20.8] Any consequential costs resulted from a component failure.
- [20.9] A vehicle if the correct type of fuel (e.g. unleaded) has not been used to drive it.
- [21] It is settled law that generally a person who signs a contractual document thereby signifies his assent of the contents of the document. In *Burger v Central South African Railways* 1903 TS 571: Innes CJ stated:-
- "it is a sound principle of law that a man, when he signs a contract is taken to be bound by the ordinary meaning and effect of the words which appear over his signature."*
- [22] Accepting the law to be as stated in the above passage, as one must, the question to be answered in this case is whether it would be reasonable to accept that Van Niekerk did not have full knowledge of the terms of the warranty and therefore not bound by them.

- [23] The respondent, if i am correct contended that the appellant had a legal duty to draw his attention to the relevant exemption clauses, which he had not done. There is a factual dispute between the evidence of Le Roux, the sales person and that of Van Niekerk as to whether the respondent's representative was made aware of the warranty clauses.
- [24] The correct approach in resolving disputes of this nature was dealt with in Stellenbosch Farmers Winery Group Ltd and Another v Martell et cie and others 2003 (1) SA 11 (SCA). I am of the view that the appellant had established on a balance of probabilities that Van Niekerk had knowledge of the warranty terms. This is based on his evidence by Le Roux that the terms of the warranty were explained and the evidence by Van Niekerk that he was informed that the vehicle was under guarantee. By virtue of his occupation and experience of running a fleet of vehicles he knew of the warranty upon which the respondent relies for its claim. Van Niekerk was aware that the terms and conditions contained in the warranty governed the relationship between the appellant and the respondent. He cannot therefore feign ignorance about the terms of the warranty and at the same time be selective about which terms he wished to be operative to his claim. Of importance here is also whether the provisions such as the relevant exclusion clauses were unexpected. In my view such exclusionary clauses form part of agreements entered into on a daily basis and cannot therefore be unexpected.
- [25] The respondent alleged that the exemption clause is contrary to public policy in that amongst others the word "accident" is not defined and it therefore gives Pretorius the discretion to authorize the repairs under the warranty notwithstanding that the repairs to a vehicle could have been done by a non-approved Toyota panel beater. According to him the exclusion clause therefore takes away the respondent's rights. The court aquo did not deal with this argument and only dealt with the question whether the respondent was bounded by the exemption clauses. In this regard the Respondent relied on the case of Barend Petrus Barkhuizen v Ronald Stuart Napier CCT72/05 [2007] ZACC 5 Delivered on 4 April 2007. The appellant contended that public policy does not find any application in that no ambiguity can be found in the exemption clauses and the word accident should be given its ordinary meaning. Further that the facts in the case of Barkhuizen 's case supra should be differentiated from the present matter. There is merit in the submission by appellant.
- [26] In *Brisley v Orotsky* 2002 (4) SA 1 Cameron J observed that the "constitutional values of dignity and equality and freedom require that a court approach the task of striking down contracts or declining to enforce them with perspective restraint... ,contractual autonomy is part of freedom. Shorn of its obscene excesses contractual autonomy informs also constitutional value dignity".
- [27] The question is wether the respondent was forced to contract with the appellant on terms which infringed his constitutional rights and requires the court to invalidate the clause in question. On the basis of the evidence it is not possible to reach suh a conclusion. There is no evidence that the sale agreement was not entered into freely and voluntarily. The respondent when he signed the contract bound himself to the terms and conditions of the

contract. The Respondent was conscious that there were some conditions contained in the warranty booklet. Evidence on record shows that the repairs to the Respondent's vehicle were not as result of any part failure. It also establishes that the damage was caused by intervening factor/s thereby causing the repairs not to be covered under the warranty. The damage to the vehicle's engine therefore fell within the warranty exemptions.

[28] For the reasons stated above I propose the following order:

[28.1] Appeal is upheld with costs

M B MAHALELO

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION,

JOHANNESBURG

I AGREE

B MASHILE

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION,

Counsel for the Appellant: A B G CHOUDREE

Counsel for the Respondent: J H CILLIERS

Date of Hearing: 3 March 2015

Date of Judgement: 13 May 2015

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPJHC/2015/328.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/toyota-south-africa-pty-ltd-v-baobab-unknown-topic-agpjhc-2015>

Prepared on 13 October 2026 · Esheria