

SOUTH AFRICA / JUDGMENT

Vatsha v Shalom Motors (Pty) Ltd (NCT/95174/2017/75(1)(b)) [2018] ZANCT 67 (15 May 2018)

[2018] ZANCT 67

COURT

National Consumer Tribunal

BEFORE

X May

CASE / FILE NUMBER

NCT/95174/2017/75(1)(b)

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IN

**THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION****Case****number: NCT/95174/2017/75(1)(b)****In****the matter between:**TEMBINKOSI
VATSHA
APPLICANT
And
SHALOM
MOTORS (PTY)
LTD
RESPONDENT**Coram:**X
May Presiding Member
Date
of Hearing - 28 February 2018 (East London)

JUDGMENT**AND REASONS****APPLICANT**

1. The Applicant in this matter is Tembinkosi Vatsha, a major male (hereinafter referred to as "the Applicant" or "Mr

Vatsha"). Mr Vatsha appeared in person at the hearing and represented himself.

RESPONDENT

2. The Respondent is Shalom Motors (Pty) Ltd situated at No 64 Sivewright Avenue Doorfontein in Johannesburg, a registered company (herein referred to as "the Respondent"). The Respondent was not present at the hearing.

APPLICATION TYPE

3. This is an application in terms of Section 75(1)(b) of the Consumer Protection Act, 68 of 2008 (hereinafter referred to as "the

CPA")

4. Section 75(1) of the CPA states the following-

" if the commission issues a notice of non-referral in response to a complaint, other than on the grounds contemplated in section 116, the complainant concerned may refer the matter directly to-

(a)

(b) The Tribunal, with the leave of the Tribunal".

5. In an application of this nature the National Consumer Tribunal (hereinafter referred to as "the Tribunal") considers

whether it should grant the Applicant leave to bring a complaint to the Tribunal after the National Consumer Commission (hereinafter

referred to as the Commission") has issued a notice of non-referral in response to a complaint. If leave is granted then the

Tribunal will conduct a separate hearing and consider the merits of the complaint.

JURISDICTION

6. Section 75 (5) of the CPA States that:

“The Chairperson of the Tribunal may assign any of the following matters arising in terms of this Act to be heard by a single member of the Tribunal, in accordance with section 31(1)(a) of the National Credit Act:

(a)...

(b) an application for leave as contemplated in subsection (1)(b).”

7. Accordingly, the Tribunal has jurisdiction to hear this application for leave to refer a complaint to the Tribunal as contemplated under Section 75

(1) (b).

BRIEF BACKGROUND OF THE MATTER

8. On or about 4 October 2016; Mr Vatsha saw an advert on OLX website advertising a sale of a Nissan Almera 2006 Model. Thereafter, he contacted the dealer Shalom Motors and spoke to a sales person by the name of Clint as well as the owner Mr Mindaye.
9. According to Mr Vatsha, as he resides in Eastern Cape (King William's town) and the dealer is based in Johannesburg, he was advised to come and view the vehicle.
10. Mr Vatsha confirmed that he bought bus tickets amounting to R1300.00, and upon his arrival to the dealer's business he viewed the vehicle and paid an amount of R50.000 (Fifty Thousand Rands) being the cash price for the vehicle.
11. Mr Vatsha took delivery of the vehicle and drove it from the Dealership place to a Garage to fill it up with petrol for an amount of R677.65. At the petrol station, the petrol attendant advised him that the petrol was spilling on the ground due to a petrol tank leak.
12. As he was still within Johannesburg, the Applicant phoned the dealership and was allegedly advised to drive back to the dealership for the petrol tank to be fixed, and indeed it was fixed. The dealership allegedly further undertook to reimburse Mr Vatsha for the petrol that he had lost because of the leak in the tank.
13. According to Mr Vatsha; because his journey was delayed by the fixing of the petrol tank which was leaking; the leak resulted in him incurring R300.00 additional and R600.00 overnight accommodation costs.
14. On 6 October 2016, Mr Vatsha took his Nissan Almera to the Nissan Dealership in East London for service and had to pay R3 346.37 for further inspection. On inspection they advised him that there was an oil leak on the engine, and that they needed to run some mechanical tests so that they could be sure about the causes of the oil leak. For that engine testing; he paid an extra amount of R627.
15. According to Mr Vatsha, the results of the test proved that the head gasket had been blown and the quotation by Nissan dealership came to R30.856.2,2 excluding the amount of R3346.37 for service that he already paid and R627.00 for the test that was conducted.

16. Mr Vatsha tried to claim all his expenses directly from the Respondent within the period of 7 days as per their terms and conditions and the Respondent has not paid him back the amounts claimed. Instead; the Respondent requires him to book in the vehicle with them for fixing. However, the Applicant is not prepared to do so.
17. Mr Vatsha wants Shalom Motors (Pty) Ltd to pay back his money and cancel the deal.
18. This matter was referred to the Motor Industry Ombud of South Africa. And according to the conclusion of MIOSA; handed down on the 09 May 2017, "Shalom Motors (Pty) Ltd must collect and take ownership of Mr Vatsha's complaint by restoring Mr Vatsha's vehicle back to its manufacture specification without costs to Mr Vatsha's; within 31 days of the letter dated 9 May 2017. And Shalom Motors (Pty) Ltd failed to honour the terms of this MIOSA finding.

THE HEARING

19. At the hearing of this application, Mr Vatsha represented himself, and there was no appearance from the side of the Respondent.
20. A referral in terms of section 75 of the Act is a referral of the complaint that the Applicant lodged with the Commission, and in respect of which the Commission elected to issue a notice of non-referral dated 19 October 2017.
21. The Tribunal will therefore, when considering whether or not to grant the Applicant leave to refer, use the same test as applied in the High Court for application for "leave".

APPLICATION FOR LEAVE

22. In the matter of Coertze and Burger v Young^[1] the Tribunal considered the factors that must be evaluated regarding leave. The Tribunal held that the following two factors must be considered:
 - 22.1 The Applicant's reasonable prospects of success with the referral; and
 - 22.2 Whether the matter is of substantial importance to the Applicant or the Respondent.
23. It is very clear that the matter is of substantial importance to both parties. On the one hand, the Applicant bought this vehicle with the intention of starting a business and paid other moneys which have not yet been refunded by the Respondent.
24. The Respondent continues to escape the responsibility of taking back the vehicle from the Applicant in order to fix it as per the finding of Motor Industry Ombudsman of South Africa, and this puts the Applicant in a disadvantageous situation as the vehicle is stationary in his yard and not fulfilling the purpose for which it that was purchased..

CONCLUSION

25. The Applicant enjoys reasonable prospects of succeeding in his application against the Respondent.

ORDER

26. Accordingly, the Tribunal makes the following order-

26.1 The Applicant's application for leave to refer the matter directly to the Tribunal is Granted;
and

26.2 There is no order as to costs.

DATED in Centurion on THIS 15th Day of May 2018

[Signed]

Xolela May Presiding Member

[1] NCT- 714 2·2012-75 (1) (b) & (2)

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