

SOUTH AFRICA / JUDGMENT

Yahav v Okoh Motors (GCC 06/2021) [2021] ZACONAF 3 (7 September 2021) [2021] ZACONAF 3

COURT

Consumer Affairs Court

BEFORE

M A du Plessis, M Phukubje, J Rasethaba

CASE / FILE NUMBER

GCC 06/2021

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IN THE CONSUMER

AFFAIRS COURT FOR THE PROVINCE OF GAUTENG

HELD AT

JOHANNESBURG

CASE NO: GCC 06/2021

In the matter

between:

GUIL
YAHAV
Plaintiff
and
OKOH
MOTORS
Defendant

JUDGMENT

1. The National Consumer Commission referred this dispute to the Office for the Investigation of Unfair Business Practices, in terms of s 71 of the Consumer Protection Act, No 68 of 2008 (CPA), for investigation in terms of s 72(1)(c) of the CPA.
2. The Office for the Investigation of Unfair Business Practices provided evidence to indicate that their facilitation of mediation or conciliation between the parties in terms of s 84(b) of the CPA was unsuccessful.
3. The Office for the Investigation of Unfair Business Practices referred the dispute to this Consumer Affairs Court in terms of s 84(c) of the CPA.
4. This is an action in terms of which the Plaintiff seeks a refund of the purchase price for a motor vehicle that he bought from the Defendant on or about 24 February 2020. The plaintiff based his claim on ss 55 and 56 of the CPA.
5. On 21 June 2021, summons was issued in terms of the Consumer Affairs (Unfair Business Practices) Act, No 7 of 1996. The Defendant entered an appearance to defend the matter, after the summons was served on him.
6. At the hearing of this matter on 7 September 2021, the Plaintiff was represented by the Consumer Protector, Ms Sanele Mthuli. The Defendant was represented by its owner, Mr Okoh.
7. The common cause facts not in dispute are:
 7. On or about 24 February 2020, the Plaintiff and Defendant entered into an agreement whereby the Plaintiff purchased from the Defendant, a used 2012 Hyundai IX35 motor vehicle with VIN number [...] and engine number [...].
 - 7.2 Within 48 hours of the purchase of the vehicle, the vehicle broke down and had to be towed, first to a nearby petrol station and subsequently to the premises of the Defendant.
 - 7.3 The Plaintiff informed the Defendant of the vehicle's failure and the vehicle and keys were returned to the Defendant.
 - 7.4 Despite Plaintiff informing the Defendant of the defects to the vehicle, the Defendant failed to attend to the repairs.
 - 7.5 To date the vehicle remains in the possession of the Defendant.
8. The facts in dispute are:
 - 8.1 The Plaintiff avers that he paid the Defendant R146 000,00 for the vehicle, whereas the Defendant maintains that the purchase price was R126 000,00.

8.2 The Defendant avers that the Plaintiff caused the vehicle to fail by filling the vehicle's tank with petrol, instead of diesel.

9. Findings on evidence:

9.1 The Plaintiff failed to present evidence to support his assertion that he paid R146 000,00 for the vehicle. Evidence presented by way of an invoice, signed by both parties to the dispute, reflects the purchase price as R126 000,00. The Defendant's bank statement reflects the receipt of an amount of R126 000,00 by way of electronic transfer. The Plaintiff failed to provide evidence of an additional cash payment of R20 000,00. On the basis of evidence led at the hearing, the Members of the Gauteng Consumer Affairs Court find that the purchase price of the vehicle was for an amount of R126 000,00.

9.2. The Defendant failed to present any evidence in support of his averment that the failure of the vehicle was caused by the Plaintiff filling the vehicle's tank with petrol, instead of diesel.

9.3. From the evidence presented by both the Plaintiff and the Defendant, the Members of the Gauteng Consumer Affairs Court further find as follows:

9.3.1 The Defendant failed to comply with s 55(2)(a)-(c), which reads:

Consumer's rights to safe, good quality goods

55.

(2) Except to the extent contemplated in subsec (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.

9.3.2 The Plaintiff exercised his rights in terms of s 56(1) and (2) of the CPA. The Defendant however contravened these rights.

Section 56(1) and (2) of the CPA reads:

Implied warranty of quality

56.

- (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.

The Members of the Gauteng Consumer Affairs Court order as follows:

1. The Defendant must pay the Plaintiff and amount of R126 000,00 within 14 (fourteen) working days from the date of this judgment.
2. The Defendant must pay the Plaintiff interest, as determined in terms of the Prescribed Rate of Interest Act, No 55 of 1975, on the amount of R126 000,00 from the date of judgment, until the date of payment.

ORDERED as such at JOHANNESBURG on 7 September 2021.

Prof. M A du Plessis

CHAIRPERSON

MEMBERS Adv M Phukubje and Adv J Rasethaba concurred.

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