

**IN THE KWAZULU-NATAL CONSUMER TRIBUNAL
HELD IN DURBAN**

Case number: KZNCT18/2022

In the matter between:

KWAZULU-NATAL CONSUMER TRIBUNAL

FIRST PLAINTIFF

MFUNDO MXOLISI MATHEWS MOLOBELA
(Name of the CONSUMER)

SECOND PLAINTIFF

And

HALLMARK PALMCREEK INVESTMENTS (PTY) LTD
t/a DURBAN SOUTH TOYOTA

FIRST DEFENDANT

STANDARD BANK OF SOUTH AFRICA LIMITED

SECOND DEFENDANT

Coram:

Prof B Dumisa	-	Chairperson and Presiding Tribunal Member
Ms A Sewpersard	-	Tribunal Member
Adv N Nursoo	-	Tribunal Member

Date of Hearing	-	01 March 2023
Date of Judgment	-	05 March 2023

JUDGEMENT AND SETTLEMENT ORDER

PLAINTIFFS

FIRST PLAINTIFF

1. The First Plaintiff in this matter is the **OFFICE OF THE KWAZULU-NATAL CONSUMER PROTECTOR**, established in terms of Section 5 of the KwaZulu-Natal Consumer Protector Act (the "Act")(hereinafter referred to as "the First Plaintiff", with head Offices at 270 Jabu Street, Pietermaritzburg, in the Prof of KwaZulu-Natal.

1.1 The Office of the KwaZulu-Natal Consumer Protector falls under the Department of Economic Development, Tourism and Environmental Affairs (EDTEA) in the Province of KwaZulu-Natal.

1.2 At the Hearings, the First Plaintiff was represented by Mr Ryan Moodley, a Deputy Director in the Office of the KwaZulu-Natal Consumer Protector, in the employ of the First Plaintiff.

1.3 The First Plaintiff's Investigation Report was deposed by Ms Ntumiseng Nketlana, an Assistant Director in the unit within EDTEA who is also appointed as an Investigator within the Office of the Consumer Protector in KwaZulu-Natal.

SECOND PLAINTIFF

2. The Second Plaintiff, the Consumer, in this matter is Mr **MFUNDO MXOLISI MATHEWS MOLOBELA**, an adult male, who resides at KwaMsane Township, 3935, in the Province of KwaZulu-Natal.

2.1 He is the owner of a **VOLKSWAGEN AMAROK 2.0TDI Trendline**, 103KN, 2015 model, which is White in colour, with registration number ND252263, with Vin Number WV1ZZZ2HZFA30013, Engine Number CNF 048155, Registration Number NHL35525.

2.2 He purchased this motor vehicle as a previously-owned car, or a Used Car, from the Defendant on the 3rd of December 2021, on the understanding that it was in good condition. There were however many mechanical problems with the car:

2.2.1 the vehicle developed mechanical problems the very same day he collected it;

2.2.2 the car was subsequently taken to **AM Automotive Service Centre (Pty) Ltd**, a private company duly registered and incorporated in terms of the Companies Act of the Republic of South Africa, with Registration Number 2013/131269/07, with its principal place of business situated at 92 Alumina Alley Unit, Alton, Richards Bay , in the Province of of KwaZulu-Natal. The car remains at this repair shop to-date; and

2.2.3 the Defendant did not even want to co-operate with the Motor Industry Ombudsman of South Africa (MIOSA) in trying to resolve this dispute.

2.3 On the 25th of January 2023, the Second Plaintiff lodged a complaint against the Defendant in terms of Part H of the Consumer Protection Act, No. 68 of 2008, as amended ("the CPA"), which guarantees consumers "*Right to fair value, good quality and safety*" through Sections 53-61 of the Act.

2.4 At the Hearing, the Second Plaintiff was represented by an Attorney, Mr S. Ngubo, of Z M Zuma Incorporated.

FIRST DEFENDANT

3. The First Defendant is **HALLMARK PALMCREEK INVESTMENTS trading as DURBAN SOUTH TOYOTA**, a company and motor car dealership with Registration Number 2015/050980/07, with its principal place of business situated at 2 Prospecton Road, Prospecton, 4133, Durban, in the Province of KwaZulu-Natal, which has chosen this address as its domicillum citandi et executandi.
4. At the Hearing, the Defendant was represented by Advocate P.S. Hoar, briefed by Essack & Hansa Attorneys.

SECOND DEFENDANT

5. The Second Defendant is **STANDARD BANK**, a commercial bank registered with Registration Number 1962/000738/06, in terms of the Banks Act 94 of 1990. It is also a registered financial services and registered Credit provider in terms of the National Credit Act 34 of 2005, with its head office at 33 Baker Street, Rosebank, Johannesburg, in the Gauteng Province.
 - 5.1 The Second Defendant was properly served on this matter, see attached Exhibit A, an Affidavit by Ms Vanessa Nomaswazi Shabangu.
 - 5.2 No relief is sought against the Second Defendant, who is merely cited as an interested party; hence they did not make any formal submissions nor attend the hearing.

THE HEARING

6. This matter was set down for a hearing on the 1st of March 2023.
7. The parties decided to settle the matter between themselves; hence submitted their Settlement Agreement to be made the Order of the Tribunal.

CONCLUSION

8. Consequently, the Tribunal is persuaded that it is appropriate to grant the request of the parties that their Settlement Agreement be made an Order of the KZN Consumer Tribunal.

ORDER

9. Accordingly, the Tribunal makes the following order:
The Settlement Agreement, dated the 1st of March 2023, concluded between the First Plaintiff, Second Plaintiff, and The Defendant, which is attached as "Annexure A", under case KZNCT18/2022, is confirmed and made an order of the KwaZulu-Natal Consumer Tribunal in terms of Section 150(d) of the National Credit Act, Act 34 of 2005.
10. There is no order as to costs.

KwaZulu Natal Consumer Protector and Mfundo Mxolisi Mathews Molobela v Hallmark Palmcreek
Investments (Pty) Ltd t/a Durban South Toyota

Author: Prof B.C. Dumisa

Thus, done and signed in Durban on this 6th Day of March 2023.



Prof. B. Dumisa
Chairperson and Presiding Tribunal Member

Ms. A Sewpersad (Tribunal Member) and Adv N Nursoo (Tribunal Member) concurring.

AFFIDAVIT

I the undersigned

VANESSA NOMASWAZI SHABANGU

do hereby make oath and state that:

1. I am the deponent ID number 9108050710088 I an adult female presently employed as an Administrative Officer for the Consumer Tribunal within the Office of the KwaZulu Natal Consumer Protector who is the First Plaintiff in this matter and was established in terms of Section 5 of the KwaZulu Natal Consumer Protector Act 04 of 2013 with Head Offices at 270 Jabu Ndlovu Street, Pietermaritzburg, in the Province of KwaZulu Natal.
2. On the 6th of February 2023 , contacted the Standard Bank call centre to consult with their legal department. This would be necessary to dispatch summons.
3. I was advised that there was no legal department, and further briefed the agent as to my request and the involvement of "The Standard Bank Limited" has on the case.
4. The agent thereafter provided me with email address to direct and forward the documents to.
5. Following the documents dispatch I have received emails ,advising documents will be sent to the relevant people and/or seeking further information.
6. Email correspondences are supplied in support of my affidavit.



Deponent

I the deponent acknowledges that I understands the contents of this affidavit and has no objection to the taking of the prescribed oath which he regards as binding on here conscience.

Umnyango Wezokuthuthukiswa koMnotho, Ezokongiwa Kwemvelo nezokuVakasha KwaZulu Natal
23 MAR 2023
Department of Economic Development Environmental Affairs and Tourism KwaZulu-Natal

Good morning Wenzel

Trust you are doing well.

With reference to the below communication, would you be able to assist.

Regards

Martie

From: Vanessa.Shabangu@kznedtea.gov.za
To: VAFVendorSupport@standardbank.co.za
Subject: RE: Fw: RE: MM Molobela v Durban South Toyota & The Standard Bank of South Africa Limited - AL-060223-15107 - PLR-060223-4663 - VAF-070223-9940

Good day ,

Thank you for your response.

I have the Vehicle Finance Account number / Agreement Number: 0000894596/1

Client's ID Number: 910524 5849 986

Kindly confirm trailing email and the summons attached therein. Kindly confirm the Credit Agreement made by Mr Mfundo Molobela and Standard Bank.

Regards

From: VAF Vendor Support [mailto:VAFVendorSupport@standardbank.co.za]
Sent: 15 February 2023 03:06 PM
To: Vanessa Shabangu
Subject: Fw:RE: MM Molobela v Durban South Toyota & The Standard Bank of South Africa Limited - AL-060223-15107 - PLR-060223-4663 - VAF-070223-9940
Importance: Low

Good afternoon

Trust my mail finds you well.

Kindly provide me with the 12 digit vehicle & asset account number and a brief description of how you would like me to assist.

Regards

Martie

From: Vanessa.Shabangu@kznedtea.gov.za
To: PersonalLendingRecoveries@standardbank.co.za
Subject: RE: MM Molobela v Durban South Toyota & The Standard Bank of South Africa Limited - AL-060223-15107 - PLR-060223-4663

Good day,

Thank you for your prompt response.

Kindly note that this matter relates to Vehicle Finance. Please direct to the relevant department in which the documents can be sent. I have made numerous calls without much direction.

Your assistance will be much appreciated.

Vanessa Shabangu

Department of Economic Development,

Tourism and Environmental Affairs

Unit:Consumer Protection Services

270 Jabu Ndlovu Street,

Pietermaritzburg,3201

Tel: 033 264 2538

Cell: 071 888 4313

From: Personal Lending Recoveries [mailto:PersonalLendingRecoveries@standardbank.co.za]

Sent: 07 February 2023 08:56 AM

To: Vanessa Shabangu

Cc: biyasezt@yahoo.com

Subject: MM Molobela v Durban South Toyota & The Standard Bank of South Africa Limited - AL-060223-15107 - PLR-060223-4663

Importance: Low

Mimecast Attachment Protection was unable to create safe copies of your attachments.

Good day

Please note that we deal with Cheques and loan accounts in Collections

Please provide account number

regards

Personal lending

From:PTLVendors@standardbank.co.za

To:PersonalLendingRecoveries@standardbank.co.za

Subject:MM Molobela v Durban South Toyota & The Standard Bank of South Africa Limited - AL-060223-15107

Good day Team

Trust you are well

As per the e-mail request mentioned below, please note that the customer's profile does not reflect a Term Loan account.

Therefore kindly adopt and provide the necessary assistance.

Regards

Mukhtar Leslie

Collections Admin / Client Segment Credit / Account Management Consultant

Tel +27 (0)11 636 5461 / www.standardbank.com

Standard Bank / South Africa / A member of Standard Bank Group

Escalations:

1st Escalation: PaulineMatlhodi.Mpane

Team Leader: Collection Admin / Client Segment Credit

Telephone: Tel +27 11 636 5346

Email: paulinematlhodi.mpaneta@standardbank.co.za

2nd Escalation: Lincoln Abrahamns

Manager: Collection Admin / Client Segment Credit

Telephone: Tel +27 11 636 7886

Email: lincoln.abrahams@standardbank.co.za

From: Vanessa.Shabangu@kznedtea.gov.za

To: personallendinrecovery@standardbank.co.za

Subject: MM Molobela v Durban South Toyota & The Standard Bank of South Africa Limited

Good day,

Our ref: KZNCT18/2022

The above matter refers.

Kindly receive the documents attached herein for your urgent attention.

We await your acknowledgment of this email and response.

Regards,

Miss Vanessa Shabangu

Office of the Kwazulu Natal Consumer Protector

KZN Consumer Tribunal

270 Jabu Ndlovu Street,

Pietermaritzburg, 3201

Tel: 033 264 2538

Cell: 071 888 4313

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by Mimecast Ltd, an innovator in Software as a Service (SaaS) for business. Providing a safer and more useful place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

Standard Bank email disclaimer and confidentiality note
Please go to www.standardbank.co.za/site/homepage/emaildisclaimer.html to read our email disclaimer and confidentiality note. Kindly email disclaimer@standardbank.co.za (no content or subject line necessary) if you cannot view that page and we will email our email disclaimer and confidentiality note to you.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by Mimecast Ltd, an innovator in Software as a Service (SaaS) for business. Providing a safer and more useful place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

Standard Bank email disclaimer and confidentiality note
Please go to www.standardbank.co.za/site/homepage/emaildisclaimer.html to read our email disclaimer and confidentiality note. Kindly email disclaimer@standardbank.co.za (no content or subject line necessary) if you cannot view that page and we will email our email disclaimer and confidentiality note to you.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically

archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business.
Providing a **safer and more useful** place for your human generated data. Specializing in;
Security, archiving and compliance. To find out more [Click Here](#).

Standard Bank email disclaimer and confidentiality note
Please go to www.standardbank.co.za/site/homepage/emaildisclaimer.html to
read our email disclaimer and confidentiality note. Kindly email
disclaimer@standardbank.co.za (no content or subject line necessary) if you
cannot view that page and we will email our email disclaimer and
confidentiality note to you.

Good day,

The above refers.

Attached herein is a copy of the Summons for your attention.

Kindly note that Standard Bank is cited as Second Defendant is merely a party, there are no costs. However due to the fact the Second Plaintiff (Mr Mfundo Molobela) has an Financial Credit Agreement with Standard Bank. In the event that a judgement is sought against the First Defendant (Durban South Toyota) would be required to settle the outstanding balance owing and repay the full instalments paid thus far towards the vehicle finance.

In light of the above our office urgently seeks a formal acknowledge or letter in this regard acknowledging of that Standard Bank has been informed.

Should they be any enquires feel free to contact myself via email or on the numbers below.

Regards,

Vanessa (Swazi) Shabangu
Department of Economic Development,
Tourism and Environmental Affairs
Unit: Consumer Protection Services
270 Jabu Ndlovu Street,
Pietermaritzburg, 3201
Tel: 033 264 2538
Cell: 071 888 4313

IN THE KWAZULU-NATAL CONSUMER TRIBUNAL
HELD AT THE DISTRICT OF DURBAN

Case No.: KZNCT18/2022

In the matter between:

KWAZULU-NATAL CONSUMER PROTECTOR
MFUNDO NXOLISI MATHEWS MOLOBELA

First Plaintiff
Second Plaintiff

and

HALLMARK PALMCREEK INVESTMENTS (PTY) LTD
t/a DURBAN SOUTH TOYOTA
STANDARD BANK OF SOUTH AFRICA LIMITED

First Defendant
Second Defendant

SETTLEMENT AGREEMENT

1. The second plaintiff and the first defendant agree to settle the abovementioned dispute on the terms and conditions set out hereunder.
2. The first defendant will pay whatever amount is necessary to A M Automotive Service centre (Pty) Ltd ("**A M Automotive**") to secure the release of the 2015 VW Amarok motor vehicle ("**the vehicle**") to the second plaintiff. with Vin number WV1ZZZ2H zFA03 0013 and Engine Number CNF048155.

mmm

mmm

3. The second plaintiff will take delivery of the vehicle and upon doing so, will sign whatever documents may be necessary for A M Automotive to lodge a claim with "Innovation Group" in respect of the warranty on the vehicle.
4. The first defendant shall ensure that when the vehicle is collected by the second plaintiff, it has a full tank of diesel.
5. It is recorded that A M Automotive has agreed to furnish the second plaintiff with a 12 month / 20 000km (whichever comes first) warranty on its workmanship from the date of collection of the vehicle, provided that the second plaintiff takes the vehicle to A M Automotive for a service every 5 000km.
6. This agreement is in full and final settlement of all disputes referred to the Consumer Tribunal and niether party hereto shall have any further claims against the other in respect of the issues referred to the Tribunal in these proceedings.
7. Niether party to this settlement agreement has been enticed, coerced or subjected to duress in entering into this agreement. No representations made during the course of negotiating this settlement agreement, other than those recorded herein, shall be binding on the parties.
8. No variation to the terms of this settlement agreement will be binding on the parties unless reduced to writing and signed by both parties.



mmm

Dated at THE CONSUMER TRIBUNAL, DURBAN on this 1st day of March 2023




Second Plaintiff

Mfundu MM Molobela
Represented by :
Z M Zuma
Mr. S Ngcobo



First Defendant (duly authorised)

IKBAL DHORAT
Legal Representatives :
Essack & Hansa Attorneys
Rep: Adv S Hoor



Signed by

Ryan Moodley on behalf of
Kwazulu Natal Consumer Protector
First Plaintiff



Signed by