

**IN THE KWAZULU-NATAL CONSUMER TRIBUNAL**  
**HELD AT DUNDEE**

**CASE NO: KZNCT19 /2023**

In the matter between:

**KWAZULU-NATAL CONSUMER PROTECTOR**

**1<sup>ST</sup> PLAINTIFF**

**BUSISIWE NOMATHEMBA ZWANE**

**2<sup>ND</sup> PLAINTIFF**

And

**N.V. PARK AND SELL**

**1<sup>ST</sup> DEFENDANT**

**LOURENS OOSTHUIZEN**

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**SETTLEMENT ORDER**

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Coram:

Ms. A. Sewpersad      Alternate Deputy Chairperson & Presiding Member

Adv. N. Nursoo      Member

Mrs. P. Dabideen      Member

Date of Hearing      8 February 2024

Date of Judgement      12 February 2024

## 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-Zulu-Natal Consumer Protector Act 04 of 2013 (the "Act") (hereinafter referred to as "the First Plaintiff"), with Head Offices at 270 Jabu Ndlovu Street, Pietermaritzburg, in the Province of KwaZulu- Natal.
2. 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.
3. At the hearing, the First Plaintiff was represented by Mr R. Moodley, the Deputy Director in the Office of the Consumer Protector KwaZulu-Natal, in the employ of the First Plaintiff.
4. The First Plaintiff's Investigation Report was deposed to by **MS. T.P. MAKHATINI**, an Assistant Director, a Complaints Handler within the Office of the KwaZulu-Natal Consumer Protector, at its offices at the uMzinyathi District Office, in the Province of KwaZulu-Natal.

### SECOND PLAINTIFF

5. The Consumer, who is the Second Plaintiff in this matter is a major female in the Nkande Area, Dundee, in the Province of KwaZulu-Natal (hereinafter referred to as "the Second Plaintiff" or "the Consumer").
6. The Second Plaintiff lodged his complaint against the First and Second Defendant on the 18<sup>th</sup> of August 2023.
7. At the hearing, the Second Plaintiff represented herself.

## DEFENDANTS

8. The First Defendant is **N.V PARK AND SELL**, a business, with its principal place of business situated next to the Engen Garage on Church Street, Vryheid, KwaZulu-Natal which address it has chosen as its domicillium citandi et executandi (hereinafter referred to as "the First Defendant").

9. The Second Defendant is **LOURENS OOSTHUIZEN**, who is the sole owner of the First Defendant.  
(Hereinafter referred to as "the Second Defendant.")
10. Mr Lourens Oosthuiuzen acted on behalf of the First Defendant.

#### **APPLICATION TYPE AND ORDER SOUGHT**

11. This KZN Consumer Tribunal (hereinafter referred to as "the Tribunal") derives the jurisdiction for hearing this matter under Section 10 and Section 21 of the KwaZulu-Natal Consumer Protection Act, 4 of 2013 (the KZNCPA). This matter is in terms of Section 19 and Section 47(3) of the Consumer Protection Act 68 of 2008. (the CPA)
12. The Second Plaintiff sought an order against the First and Second Defendant in the following terms:
- 12.1. The First Defendant's Conduct is declared prohibited conduct in contravention of Section (55(2) (a) to (c) and Section 56(1) and (2) of the Consumer Protection Act 68 of 2008.
- 12.2. Directing the First Defendant jointly and severally, the one paying the other to be absolved, to pay the total costs of the repairs to remedy the defects found in the Second Plaintiff's motor vehicle.
- 12.3. To order the First and Second Defendants, jointly and severally, the one paying the other to be absolved, to pay the repair costs within 30 days of the judgment directly to the bank account of the Second Plaintiff.
- 12.4. To order the First and Second Defendants, jointly and severally, the one paying the other to be absolved, to pay the legal costs of the Second Plaintiff only if defended.
- 12.5. Directing the Defendants jointly and severally, the one paying the other to be absolved, to pay an administrative. penalty in a sum to be determined by the Consumer Tribunal and/or making any other appropriate order contemplated under Section 4(2)(b)(ii) of the Consumer Protection Act 68 of 2008.
- 12.6. Further and/or alternative relief.

## **BACKGROUND**

13. On or about 29<sup>th</sup> June 2023. The Second Plaintiff purchased a pre-owned 2015 ISUZU KB BAKKIE VAN with engine number 4JMX2469 and vin number ADMUSEER6C4734688 from the First and Second Defendants.
14. The Second Plaintiff paid a total sum of R234 000-00(two hundred and thirty-four thousand rands) into the Defendant's bank account which was supplied by the Second Defendant.
15. On the following day she discovered that the vehicle did not start, and she suspected the battery to be the problem and purchased a new battery from Battery Centre Vryheid on 5<sup>th</sup> July 2023.
16. The motor vehicle failed to start, and the Second Plaintiff contacted the Second Defendant, and he advised her that the vehicle was sold without any warranty and that she could not come back to complain.
17. The Second Plaintiff made several visits and calls to enquire into what was wrong with the motor vehicle, but no interest was shown in assisting her.
18. She approached H.M.K. Autolec, which was based in Vryheid, and it was established through a diagnostic process that the vehicle had a voltage drainage problem, and this was repaired and paid for.
19. Shortly afterwards the Second Plaintiff discovered that the vehicle required a wheel alignment, and the vehicle was taken to Tyres 4U, and they advised that the wheel alignment could not be done without the chassis joints and upper and lower control arms being repaired as the vehicle had previously been in an accident.
20. On 18<sup>th</sup> August 2023 the Second Plaintiff lodged an official complaint with the Office of the Consumer Protector complaining inter alia of the defective motor vehicle sold to her.

## **THE FIRST PLAINTIFF'S ATTEMPTS TO RESOLVE THE COMPLAINT**

21. The First Plaintiff mediated this matter between the parties, which culminated in a Settlement Agreement being agreed to by both parties. See "Annexure A" attached.

**THE HEARING**

22. The matter was set down for hearing on 7<sup>th</sup> February 2024 at the EDTEA Offices, 26 Beaconsfield Road, Dundee for the settlement agreement to be made an order of the KZN Consumer Tribunal.

**ORDER**

23. The Settlement Agreement under case number KZNCT 19/2023, as recorded between the parties and attached as Annexure A, hereto, is hereby made an ORDER of this KwaZulu-Natal Consumer Tribunal.
24. Mr Lourens Oosthuizen is confirmed as Surety and Co-Principal Debtor on this Settlement Order.



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**MS. A. SEWPERSAD**

**PRESIDING TRIBUNAL MEMBER**

Adv. N. Nursoo (Member) and Mrs. P. Dabideen (Member) concurred.

# ANNEXURE A

## IN THE KWAZULU NATAL CONSUMER TRIBUNAL HELD AT DUNDEE

Case Number: **KZNCT19/2023**

In the matter between:

**THE KWAZULU NATAL**

**CONSUMER PROTECTOR**

**FIRST PLAINTIFF**

**BUSISIWE NOMATHEMBA ZWANE**

**SECOND PLAINTIFF**

**N V PARK AND SELL**

**FIRST DEFENDANT**

**LOURENS OOSTHUIZEN**

**SECOND DEFENDANT**

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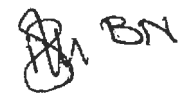
### SETTLEMENT AGREEMENT

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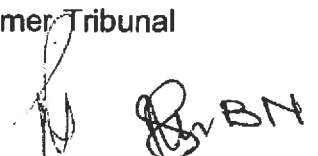
WHEREAS the consumer lodged a complaint with the Office of the Kwazulu Natal Consumer Protector in terms of the Consumer Protection Act 68 of 2008 and the Kwazulu Natal Consumer Protection Act 04 of 2013.

AND WHEREAS the Office of the Consumer Protector KwaZulu Natal facilitated the handling of the complaint which was referred to the KwaZulu Natal Consumer Tribunal.

AND WHEREAS subject to the confirmation of the Consumer Tribunal in terms of S10 of the KwaZulu Natal Consumer Protection Act 04 of 2013 the parties agreed to settle the complaint on the following terms:-

1. The First and Second Defendant admit to engaging in prohibited conduct on their part and in light of such acknowledgement hereby undertakes to pay the Second Plaintiff an amount of **R 40 000.00 (Forty Thousand Rand)** payable over four months in instalments of **R10 000.00 (Ten Thousand Rand)** and due on the last working day of each month commencing from the **28<sup>th</sup> of February 2024**.
2. The abovementioned payment will be paid directly to the Second Plaintiffs bank account with details as follows:-  
  
**NEDBANK**  
**Account Number: 1311106804**  
**Branch Code: Vryheid**  
**Account Holder details: BN ZWANE**
3. In the event of failure to pay as set in paragraph 1 and 2 above, the full amount of **R40 000.00 (Hundred Thousand Rand)** shall immediately become due, owing and payable to the Second Plaintiff.
4. The Second Defendant namely **Mr Lourens Oosthuizen** binds himself as co-principal debtor and surety on behalf of **NV PARK AND SELL** for the full amount of the principal debt.
5. The parties agree that the Second Plaintiff shall approach any competent court to enforce this agreement which is made an order of the Consumer Tribunal

Handwritten signatures of the parties, including a signature that appears to be 'BN'.

and to further seek interest at the prescribed rate at the time of this agreement was made an order of the KwaZulu Natal Consumer Tribunal.

6. This agreement has been entered into freely and voluntarily without any undue influence and is in full and final settlement of the dispute between the parties.

7. The parties further agree that the terms and conditions of this agreement will be made an order of the KwaZulu Natal Consumer Tribunal.

**Dated at DUNDEE on this 8TH day of FEBRUARY 2024.**



**First Plaintiff**

**Represented by Mr R Moodley**

B.N. Zwane

**BN Zwane**

**Second Plaintiff**

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**Lourens Oosthuizen**

**On behalf of Stutt Plant and Equipment Pty Ltd**

**First and Second Defendant**