

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

CASE NO: KZNCT20/2023

In the matter between:

KWAZULU-NATAL CONSUMER PROTECTOR

1ST PLAINTIFF

BONGANI WILSON SITHOLE

2ND PLAINTIFF

And

N.V. PARK AND SELL

1ST DEFENDANT

LOURENS OOSTHUIZEN

2ND DEFENDANT

SETTLEMENT ORDER

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-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 male in 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 8th November 2023.
7. At the hearing, the Second Plaintiff represented himself.

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 domicilium 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 17 of the Consumer Protection Act 68 of 2008.
 - 12.2. Directing the Defendants jointly and severally, the one paying the other to be absolved, to refund to the Second Plaintiff the amount of R50 000.00 being the total amount paid as a deposit to the Defendants by the Second Plaintiff.
 - 12.3. To order the First and Second Defendants, jointly and severally, the one paying the other to be absolved, to pay the refund within 15 days of the judgment directly to the bank account of the Second Plaintiff.
 - 12.4. Directing the Defendants from conducting future business in a manner that is inappropriate
 - 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 1 September 2023. The Second Plaintiff purchased a pre-owned FORD RANGER BAKKIE with registration number ND 14636 from the First and Second Defendants.
14. The Second Plaintiff paid a total sum of R50 000-00(fifty thousand rands) into the Defendant's bank account which was supplied by the Second Defendant..The full purchase price was R69 000,00(sixty nine thousand rand)
15. The Second Plaintiff on 3 September 2023 called at the premises of the dealership to pay the balance owed but discovered that the vehicle had parts missing and was not in the condition he originally viewed it in.
16. The Second Defendant, and the missing parts from the vehicle was the final straw that forced Second Plaintiff to cancel the agreement..
17. The Second Defendant accepted the cancellation and undertook to refund the Second Plaintiff .
18. Despite the undertaking to refund the Second Plaintiff the Defendant's failed to do so.The Second Plaintiff then on 8 November 2023 lodged an official complaint with the Office of the Consumer Protector to get the refund from the Defendants

THE FIRST PLAINTIFF'S ATTEMPTS TO RESOLVE THE COMPLAINT

19. 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

20. The matter was set down for hearing on 7th 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

- 1 The Settlement Agreement under case number KZNCT20/2023 as recorded between the parties and attached as Annexure A , hereto, is hereby made an ORDER of the KwaZulu-Natal Consumer Tribunal.
- 2 Mr Lourens Oosthuizen is confirmed as Surety and Co-Principal Debtor on this Settlement Order.



MS P DABIDEEN
TRIBUNAL MEMBER

Ms A Sewpersad (Member & Alternate Deputy Chairperson) and Adv. N. Nursoo (Member)
concurred

ANNEXURE A

IN THE KWAZULU NATAL CONSUMER TRIBUNAL HELD IN DUNDEE

Case Number: KZNCT20/2023

THE KWAZULU-NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

BONGANI WILSON SITHOLE

SECOND PLAINTIFF

and

NV PARK AND SELL

FIRST DEFENDANT

LOURENS OOSTHUIZEN

SECOND DEFENDANT

SETTLEMENT AGREEMENT

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.

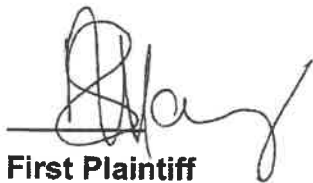
AND WHEREAS subject to the confirmation of the Consumer Tribunal in terms of S10 of the KwaZulu Natal Consumer Protection Act 04 of 2013 the parties agreed to settle the complaint on the following terms: -

- I. The First and Second Defendant admit to engaging in prohibited conduct in terms of the Consumer Protection Act 06 of 2008.

VIII. 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.

IX. 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 THE 8TH OF FEBRUARY 2024



First Plaintiff
R Moodley



First Defendant
NV Park and Sell



Second Plaintiff
BW SITHOLE



Second Defendant
Lourens Oosthuizen



Witness 1



Witness 2

