

IN THE KWAZULU-NATAL CONSUMER TRIBUNAL
HELD AT DURBAN

CASE NO: KZNCT21 /2023

In the matter between:

KWAZULU-NATAL CONSUMER PROTECTOR

1ST PLAINTIFF

KURT ROSSOUW

2ND PLAINTIFF

and

TURQUOISE MOON TRADING 75 (PTY) LTD

1ST DEFENDANT

TRADING AS XQUISITE AUTO

(REG NO: 2004/017100/07)

TAG AUTO SPECIALIST

2ND DEFENDANT

SETTLEMENT ORDER

Coram:

Ms. A. Sewpersad Alternate Deputy Chairperson & Presiding Member

Ms. N. Cawe Deputy Chairperson

Adv. N. Nursoo Member

Date of Hearing 1 February 2024

Date of Judgement 9 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 **TEREZA NAUDE**, an Assistant Director, within the Office of the KwaZulu-Natal Consumer Protector, at its Head Offices at 270 Jabu Ndlovu Street, Pietermaritzburg, in the Province of KwaZulu-Natal.

SECOND PLAINTIFF

5. The Consumer, who is the Second Plaintiff in this matter is a major male who is a resident of Athlone Park, 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 20th September 2023.
7. At the hearing, the Second Plaintiff represented himself.

DEFENDANTS

8. The First Defendant is **TURQUOISE MOON TRADING 75 (PTY) LTD**, trading as **XQUISITE AUTO**, with Company Registration number 2004/017100/07, with its principal place of business situated at Shop 2 Aldrovande Palace, 6/8 Jubilee Grove, Umhlanga, Durban, 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 **TAG AUTO SPECIALISTS**, with Company Registration number 2020/473268/07, with its principal place of business situated at 33 Cypress Avenue, Windermere, Durban, KwaZulu-Natal. (Hereinafter referred to as "the Second Defendant.")
10. The Defendants were represented by an Attorney, Ms A. Bissessar, duly authorized.

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 to refund the Second Plaintiff in the sum of R429 001-00 (Four hundred and Twenty- Nine Thousand and One Rand) being the total amount paid by the Second Plaintiff to the First Defendant.
 - 12.3. Directing the First Defendant to pay interest at the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975.
 - 12.4. To order the First Defendant to remove the vehicle at their costs from the premises of Second Defendant after the abovementioned payments are settled in full.

12.5. To order the First Defendant to pay the legal costs of the Second Plaintiff's only in the event of the matter being defended.

12.6. To order the First Defendant to pay the above amounts within 15 days of the judgment.

12.7. Directing the First Defendant 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.

12.8. Further and/or alternative relief.

BACKGROUND

13. The Consumer purchased a vehicle from the First Defendant for the sum of R429 000-00(four hundred and twenty-nine thousand rands), which had an odometer reading of 83 000km's at the time.
14. He was accompanied by a salesman of the First Defendant, Mr Andrew, who was assisting him with his engagements with the First Defendant.
15. There were a few defects in the vehicle which Mr Andrew agreed would be repaired by the First Defendant prior to the consumer taking ownership.
16. He took delivery of the vehicle from the First Defendant's premises on 19 June 2021 and modifications were done to the vehicle prior to him purchasing the vehicle and which the First Defendant did not inform him about and he only discovered the modifications to the exhaust when the warrant refused to pay.
17. He noticed faults with the vehicle on 29 June 2021 and immediately advised the First Defendant of the faults and on the same date the vehicle was sent back to the First Defendant for repair of the faults.
18. He was advised by the First Defendant that the faults were repaired, and he accordingly collected the vehicle on 6 July 2021.
19. On 4 October 2021, the vehicle overheated with a burst radiator pipe and the First Defendant collected the vehicle and it was sent to the Second Defendant for repairs.
20. On 13 December 2021 he received a call from Mr Andrew who advised him that the repairs were completed, and that the vehicle was ready for collection.

21. Upon arrival to collect the vehicle he discovered a noise emanating from the engine and made Mr Andrew aware of the said noise.
22. He took the vehicle to B&C Motorsports on the same day for a second opinion and they confirmed that there was a problem with the engine.
23. The First Defendant was informed of the inspection and the First Defendant decided to send the vehicle back to the Second Defendant for the noise emanating from the engine which had worsened, and the vehicle was also jerking.
24. The vehicle was taken to the Second Defendant on multiple occasions for repairs and despite this the vehicle was never repaired and/or repaired properly.
25. Aggrieved and dissatisfied the Second Plaintiff lodged a complaint against the First Defendant with the Motor Industry Ombudsman of South Africa (MIOSA) on or about 24 May 2022, with the cost of usage and quantum of damages as per section 20 subsection 5 and 6 of the Consumer Protection Act 68 of 2008 to be applied, within (15) fifteen business days of the communication of the recommendation.
26. MIOSA recommended that the sales agreement be cancelled and that the purchase price be refunded.
27. Despite various emails being sent to the First Defendant to resolve the dispute, there was no response from the First Defendant and a complaint was subsequently submitted to the National Consumer Commission, who referred the matter to the Office of the Consumer Protector, KwaZulu-Naal.

THE FIRST PLAINTIFF'S ATTEMPTS TO RESOLVE THE COMPLAINT

28. 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

29. The matter was set down for hearing on 1st February 2024 at the EDTEA Offices, 1st Floor, Marine Building, No. 1 Dorothy Nyembe Street, Durban, for the settlement agreement to be made an order of the KZN Consumer Tribunal.

ORDER

30. The Settlement Agreement under case number KZNCT 21/2023 as recorded between the parties and attached as Annexure "A", hereto, is made an ORDER of the KwaZulu-Natal Consumer Tribunal.



Ms. A. Sewpersad

PRESIDING TRIBUNAL MEMBER

Ms. N. Cawe (Deputy Chairperson) and Adv. N. Nursoo (Member) concurred.

ANNEXURE A

IN THE KWAZULU-NATAL CONSUMER TRIBUNAL
DURBAN, KWAZULU-NATAL

CASE NO: KZNCT21/2023

In the matter between:

KWAZULU-NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

KURT RUSSOUW

SECOND PLAINTIFF

And

TURQUOISE MOON TRADING 7 (PTY) LTD
Trading as XQUISITE AUTO
(Registration No. 2004/017100/07)

FIRST DEFENDANT

AND

TAG AUTO SPECIALIST

SECOND DEFENDANT

SETTLEMENT AGREEMENT

WHEREAS the First and Second Plaintiffs have referred a dispute to the Kwazulu-Natal Consumer Tribunal under case number KZNCT21/2023 which is set down for hearing at Durban, Kwazulu-Natal, at 9h00 on the 1st of February 2024.

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AND WHEREAS the parties have are desirous of bringing the dispute to finality in an amicable manner prior to the hearing with a view to saving costs and costly litigation expenses.

NOW THEREFORE the parties have reached an agreement as is recorded hereunder.

THE AGREEMENT

- 1.1. The First and Second Plaintiff hereby immediately withdraws the proceedings against the First Defendant which was referred to the Kwazulu-Natal Consumer Tribunal under case number KZNCT21/2023.
- 1.2. The First Defendant shall refund to Second Plaintiff the sum of R429 001.00 (Four Hundred and Twenty Nine Thousand and One Rand) being the total amount paid as the full purchase price in respect of the used motor vehicle described more fully as a 2011 model Chevrolet Lumina SS 6.0 UTE A/T P/U S/C.
- 1.3. Payment will be effected via EFT into Second Plaintiff's bank account which bank account details appear hereunder within 48 hours from the date of signature of this agreement.

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ACCOUNTHOLDER: KURT ROSSOUN
BANK: ABSA BANK
BRANCH: BLUFF
BRANCH CODE: 632005
ACCOUNT NO: 408647 1320

- 1.4. The First and Second Plaintiffs accepts this payment in full and final settlement of all and any claims whatsoever and waives, abandons, and hereby acknowledges that they shall have no further claims to any payment of whatsoever kind.
- 1.5. This settlement agreement will become binding and enforceable once it has been signed by First and Second Plaintiffs and accepted by the First Defendant.
- 1.6. Second Plaintiff undertakes to provide to the original logbook to the Second Defendant on date of signature of this agreement.
- 1.7. The First Defendant shall at its own costs and expense remove the motor vehicle from the premises of Second Plaintiff Respondent after the full purchase price is paid to Second Plaintiff.

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1.8. Each party to pay their own legal costs which may have been occasioned in these proceedings.

1.9. It is agreed that this agreement shall remain private and confidential and neither party shall disclose this agreement or the contents hereof to any media or private persons. This agreement shall remain private and confidential and is subject to a blanket non-disclosure.

1.10. The terms of this agreement are the sole terms and no representations that are not contained herein shall be of any force and effect unless so recorded in writing and signed by the parties or their duly authorised representatives. This clause shall not be capable of being excised from this agreement nor amended, varied, or added to in any manner whatsoever and is hereby entrenched.

DATED AT DURBAN THIS 01st 18 February DAY OF JANUARY 2024.


FIRST PLAINTIFF

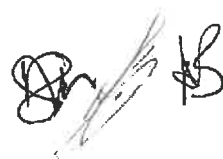
18.5.2024
As Witnessed

[Signature]
As Witnessed

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SECOND PLAINTIFF

[Signature]
As Witnessed

[Signature]
As Witnessed

DATED AT DURBAN THIS ^{01st} ~~18th~~ FEBRUARY 2024 DAY OF JANUARY 2024. 

[Signature]
For FIRST DEFENDANT - AYRIL BISSESSUR
Imran Ahmed Paruk, for an on behalf of Turquoise Moon Trading 75 (Pty) Ltd
(duly authorized)

[Signature]
As Witnessed

[Signature]
As Witnessed