

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

Case number: **KZNCT07/2023**

In the matter between:

**KWAZULU-NATAL CONSUMER PROTECTOR
CUTHBERT THEMBINKOSI BUTHELEZI**

**FIRST PLAINTIFF
SECOND PLAINTIFF**

and

**FAITHFULL CAR SALES
(REG NO. 2011/069603/23)
NEAL JACOBS**

**FIRST DEFENDANT
SECOND DEFENDANT**

Coram:

Ms. A. Sewpersad	–	Alternate Deputy Chairperson & Presiding Member
Ms P. Dabideen	–	Member
Ms N. Cawe	-	Member

Date of Hearing	-	31 July 2023
Date of Settlement Order -		7 August 2023

SETTLEMENT ORDER

DETAILS OF HEARING AND REPRESENTATION

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 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 Ryan Moodley, a Deputy Director in the Office of the KwaZulu-Natal Consumer Protector, in the employ of the First Plaintiff.

SECOND PLAINTIFF

4. The Consumer, who is the Second Plaintiff in this matter is **MR CUTHBERT THEMBINKOSI BUTHELEZI**, a major female who resides in Isipingo, Durban, in the Province of KwaZulu-Natal (hereinafter referred to as "the Second Plaintiff" or "the Consumer") represented herein by Mr Umesh Jivan, a legal practitioner.
5. The Second Plaintiff lodged his complaint against the First and Second Defendants on the 2nd of May 2023.

FIRST DEFENDANT

6. The First Defendant in this matter is **FAITHFULL CAR SALES CC**, a close corporation, duly registered in terms of the company laws of the Republic of South Africa with Registration Number 2006/033500/07, with its principal place of business situated at 135 Rinaldo Road, Glenhills, Durban North, in the Province of KwaZulu-Natal (the "Defendant") represented herein by Ms V Nandkissor, a legal practitioner.
7. The Second Defendant in this matter is Mr Neal Jacobs, an adult male car salesman/agent acting on behalf of the First Defendant and who resides in Caneside, Phoenix, Kwazulu-Natal. The Second Defendant was in default of appearance.

BACKGROUND

8. On 25th May 2022, the Consumer purchased a preowned model 2012 Ford Ranger from the First Defendant, through his agent, the Second Defendant. On 28th May 2022, the vehicle had mechanical problems and had to be towed to Ford Durban South at the expense of the Second Plaintiff:
- 8.1 The diagnostics revealed that an estimate of R113 809-25(one hundred and thirteen thousand eight hundred and nine rands and twenty-five cents) was required for the repairs.
- 8.2 The Consumer requested Ford Durban South to effect certain repairs which were necessary to make the vehicle roadworthy again and paid a discounted cost of R32 000-00 (thirty-two thousand rands) for the repairs.
- 8.3 The Consumer attempted to get assistance from the Second Defendant on many occasions, however all attempts reached a deadlock and on 18th August 2022 his son located and met with the owner of UREV Motors, Mr Ugan Chengadu who provided him with details for the Second Defendant and he confirmed that the vehicle did not belong to his stock but as advised by Mr Neal Jacobs was the property of Faithfull Car Sales.
- 8.4 The Consumer was able through the First Defendant to locate the whereabouts of the Second Defendant who provided him with the contact details of the owner of Faithful Car Sales.
- 8.5 The Consumer lodged a formal complaint with the Motor Industry Ombudsman of South Africa (MIOSA) on 29th July 2022 and after completion of the investigation, MIOSA recommended that the Respondent must cancel the sales transaction in terms of S56(2)

and S20 of the Consumer Protection Act, within 15 days from receipt of the recommendation.

APPLICATION TYPE AND ORDER SOUGHT

9. The KZN Consumer Tribunal (hereinafter referred to "the Tribunal") derives the jurisdiction for hearing this matter under Section 21 of the KwaZulu-Natal Consumer Protection Act, 4 of 2013 (the KZNCPA).
10. This matter will be heard in terms of Section 19(2)(a)(i) and Section 47(3) and Section 54 of the Consumer Protection Act, No 68 of 2008 (the "CPA").
11. The Consumer sought an order as follows:
 - 13.1. The First Defendant has engaged in prohibited conduct by contravening S44, S55(2) and S56(3) of the CPA.
 - 13.2. The First Defendant is to reimburse the full purchase price paid for the motor vehicle.
 - 13.3. The First Defendant to reimburse the repair costs of R16 960-74(sixteen thousand nine hundred and sixty rands and R32 000-00(thirty-two thousand rands) incurred to repair the motor vehicle.
 - 13.4. The First Defendant to collect the said motor vehicle from the residence of the Second Plaintiff at their costs within 7 days after the judgment is issued.
 - 13.5. The First Defendant to pay the Second Plaintiff's legal costs only if defended.
 - 13.6. To order the First Defendant adheres to any other appropriate order the Consumer Tribunal imposes as contemplated in section 4(2)) b) (ii) of the CPA.

SUMMONS SERVED ON THE DEFENDANTS

12. On the 7th of July 2023, the Summons was served on the First Defendant and on 5th July 2023 on the Second Defendant.
13. The First Defendants filed a Notice of Intention to Defend on the 20th of July 2023 and an Answering Affidavit on 25th July 2023.

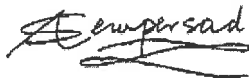
THE HEARING

14. At the hearing, the First Plaintiff informed the Chairperson of the KZN Consumer Tribunal that the parties had decided to settle the matter; and requested the Tribunal to make their Settlement Agreement an Order of the KZN Consumer Tribunal.

ORDER

15. The Settlement Agreement between the parties, on case number KZNCT07/2023, is hereby made an ORDER of this KwaZulu-Natal Consumer Tribunal. See Annexure A.

DATED AT DURBAN ON THIS 7TH DAY OF AUGUST 2023



ASHA SEWPERSAD
PRESIDING TRIBUNAL MEMBER

Ms N. Cawe (Deputy Chairperson) and Ms. P Dabideen (Member) concurred.

ANNEXURE A

IN THE KWAZULU NATAL CONSUMER TRIBUNAL HELD AT DURBAN

CASE NUMBER: KZNCT07/2023

THE KWAZULU NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

CUTHBERT THEMBINKOSI BUTHELEZI

SECOND PLAINTIFF

FAITHFULL CAR SALES

WITH REGISTRATION NO: 2011/059603/23

FIRST DEFENDANT

NEAL JACOBS

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.

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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 Defendant hereby acknowledges prohibited conduct on their part and in light of such acknowledgement hereby undertakes to refund the Second Plaintiff an amount of **R 230 000.00 (Two Hundred and Thirty Thousand Rand)** to be paid by the 3rd of August 2023.
2. Upon payment of the full amount as set out in paragraph 1 above the First Defendant will collect the Ford Ranger motor vehicle from the premises of the Second Defendant at his own cost.
3. The abovementioned payment will be paid directly to the Second Plaintiffs' attorneys trust bank account of Jivan & Co Inc. with details as follows:-
NEDBANK
Account Number: 1029959609
Branch: Durban and Coastal branch
4. The Second Plaintiff will have no further claim against the defendant.
5. Daryl Nair (First Defendant) agrees to be co- principal debtor and surety on behalf of Faithfull Car Sales CC for the full amount of the principal debt. In the event of the abovementioned payment not being made on the due date, the full amount outstanding will become due and payable by the First Defendant and Daryl Nair, immediately to the Second Plaintiff.
6. In the event of breach by the First Defendant 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 and to further seek interest at the prescribed rate at the time this agreement was made an order of the KwaZulu Natal Consumer Tribunal.

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- 7 The Defendant undertakes to not engage in such prohibited conduct.
8. 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 DURBAN on this 31ST day of JULY 2023.


Second Plaintiff
Cuthbert Buthelezi



Daryl Nair

For First Defendant and as Surety and Co Principal Debtor