

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

Case number: **KZNCT11/2023**

In the matter between:

**KWAZULU-NATAL CONSUMER PROTECTOR
CAROL ANN BOTES
(Name of the Consumer)**

**FIRST PLAINTIFF
SECOND PLAINTIFF**

and

**MYSTIC CARS (PTY) LTD
(Reg No. 2006/033500/07)**

DEFENDANT

Coram:

Prof. B Dumisa	–	Chairperson & Presiding Member
Ms A. Sewpersad	–	Member
Ms P. Dabideen	-	Member

Date of Hearing	-	02 August 2023
Date of Settlement Order	-	02 August 2023

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 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.
4. The First Plaintiffs Investigation Report was deposed by Mr Vukani Dlamini, an Investigator in the Consumer Complaints Handling Unit within EDTEA at the Stanger District within the Office of Consumer Protector KwaZulu-Natal.

SECOND PLAINTIFF

5. The Consumer, who is the Second Plaintiff in this matter is **Ms CAROL ANN BOTES** , a major female who resides in Westville, Durban, in the Province of KwaZulu-Natal (hereinafter referred to as "the Second Plaintiff" or "the Consumer").
6. The Second Plaintiff lodged her complaint against the Defendant on the 08th of September 2023.
7. At the Hearing, the Second Plaintiff represented herself.

DEFENDANT

8. The Defendant in this matter is **MYSTIC CARS (PTY) LTD**, a private company 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 the Corner of Crowe and Phezulu Drive, Ballito, in the Province of KwaZulu-Natal (the "Defendant").

9. The Defendant was represented at the hearing by **Mr Floyd Evan Willis** with the legal assistance of **Mr Solomzi Nqubeko Dube**, an Attorney at **De Wet Leitch Hands Inc.**

BACKGROUND

10. The Consumer purchased a vehicle from the Defendant, and discovered there were mechanical problems immediately after collecting it from the Defendant:

10.1 The Consumer emailed the Defendant the very next morning after collecting it.

10.2 The Consumer says she was given the run around by the Defendant, who gave her the names of three service providers who could give her quotes for repairing the problems identified.

10.3 Some problems were fixed.

10.4 The Consumer contends that the main problem was with the bushes, which remained unattended to.

10.5 The Consumer says that after the Defendant's mechanic had stripped the vehicle and got prices for the replacement bushes, the Defendant said Consumer must pay for the bushes; and the Consumer refused.

10.6 After the Consumer had refused to pay for the bushes, the Defendant simply assembled the car again and gave it back to the Consumer with the knocking and worn bushes still as before.

11. The Consumer complains that

11.1 There are many other mechanical problems that the Defendant does not want to attend to.

- 11.2** The Consumer reported the matter to the Motor Industry Ombud of South Africa, MIOSA, who conducted their own investigation and gathered further evidence and made a judgment that the Defendant must carry out all the repairs listed.
- 11.3** MIOSA said that the Defendant had to do the repairs at their own cost within a specified time limit.
- 11.4** The Defendant simply ignored the Consumer's complaints and the MIOSA recommendations.
- 11.5** This was the reason the Consumer resorted to the KZN Consumer Protector's office for redress, who further investigated the matter and decided to refer it to the KZN Consumer Tribunal for adjudication.

APPLICATION TYPE AND ORDER SOUGHT

- 12.** 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).
- 13.** 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").
- 14.** The Consumer's prayers were for:
- 14.1** The Defendant to carry out the necessary repair work enforcing the recommendations made by MIOSA as per either of the submitted quotations within 30 days from the date of judgment.
- 14.2** Declaration of the Defendant's conduct as prohibited conduct, and in contravention of Section 55(2)(a) to (c), and Section 56 of the Consumer Protection Act 68 of 2008, the CPA;

- 14.3** Directing that the Defendant pays for the repair costs of R37 051.85 (Thirty Seven Thousand Fifty One Rand and Eighty Five Cents) which is the cheapest of the three quotations sourced as recommended by MIOSA.
- 14.4** To order the Defendant to pay all of the above payments within 15 days of the judgment.
- 14.5** To order the Defendant to pay the legal costs of the Second Plaintiff's only if the matter is defended.
- 14.6** Interest on the amount referred to in (15.3) above at the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975.
- 14.7** Any other appropriate order contemplated in Section 4(2)(b)(ii).
- 14.8** Any other further relief.

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT

- 15.** The First Plaintiff tried to mediate this matter between the parties; the efforts to mediate proved fruitless.

SUMMONS SERVED ON THE DEFENDANTS

- 16.** On the 26th of June 2023, the Summons was served on the Defendants, indicating the KZN Consumer Tribunal Hearing set down date of the 2nd of August 2023.
- 17.** The Defendants filed their NOTICE OF INTENTION TO DEFEND on the 17th of July 2023. They did not file an answering affidavit

THE HEARING

18. The matter was set down for hearing, on merits, on a default basis on 2nd of August 2023 because the Respondent had failed to file an answering affidavit.
19. At the hearing, the First Plaintiff informed the Chairperson of the KZN Consumer Tribunal that the parties had decided to settle the matter; and are requesting the Tribunal to make their Settlement Agreement an Order of the KZN Consumer Tribunal.

ORDER

20. The Settlement Agreement between the parties, on case number KZNCT11/2023, is hereby made an ORDER of this KwaZulu-Natal Consumer Tribunal. See Annexure A.
21. Mr Floyd Evan Will is confirmed as Surety and Co-Principal Debtor on this Settlement Order.

DATED ON THIS 2nd DAY OF AUGUST 2023

[Signed]

Prof B Dumisa

PRESIDING TRIBUNAL MEMBER

ANNEXURE A

IN THE KWAZULU NATAL CONSUMER TRIBUNAL HELD AT STANGER

CASE NUMBER: KZNCT11/2023

In the matter between:

KWAZULU-NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

CAROL ANN BOTES

SECOND PLAINTIFF

and

MYSTIC CARS (PTY) LTD

FIRST DEFENDANT

(Reg No.2006/033500/07)

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.

F.W CB

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 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 20 000.00 (Twenty Thousand Rand)** to be paid in full by the 31st of August 2023.

2. The abovementioned payment will be paid directly to the Second Plaintiffs bank account with details as follows:-

Bank: ABSA Bank
Account Type: Savings Account
Account Holder: C A Botes
Account Number: 623415562
Branch Code: 632005

3. The Second Plaintiff will have no further claim against the Defendant.

4. Mr Floyd Evan Willis with Identity Number 7712085258088 (Defendant) agrees to be co- principal debtor and surety on behalf of the Defendant for the full amount of the principal debt. In the event of the abovementioned payment not being paid on the due date, the full amount of **R37 051.85 (Thirty Seven Thousand Fifty One Rand and Eighty Five Cents)** will become due and payable by the Defendant and Mr Floyd Evan Willis, immediately to the Second Plaintiff.

F.W. 

5. In the event of breach by the First Defendant the parties agree that the Second Plaintiff shall approach any competent court to enforce the 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.
6. 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 STANGER on this 02ND day of AUGUST 2023.



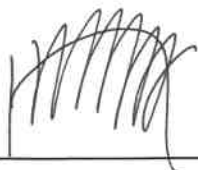
Carol Ann Botes

Second Plaintiff



Mr Floyd Evan Willis

For Defendant and as Surety and Co Principal Debtor



Solomzi Nqubeko Dube

Attorney for the Defendant

De Wet Leitch Hands Inc

