

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

**CASE NO: KZNCT22 /2023**

In the matter between:

**KWAZULU-NATAL CONSUMER PROTECTOR**

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

**FIKILE PHILISWE**

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

And

**CARWORX AUTO**

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

**KEVIN GOVINDEN**

**2<sup>ND</sup> DEFENDANT**

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**SETTLEMENT ORDER**

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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    21 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 **NGUBO KENNETH SIBUSISO**, an Assistant Director, a Complaints Handler 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 female who resides at 14 Ridge Road, Amanzimtoti, KwaZulu-Natal (hereinafter referred to as "the Second Plaintiff" or "the Consumer").
6. The Second Plaintiff lodged her complaint against the First and Second Defendant on the 4<sup>th</sup> July 2023.
7. At the hearing, the Second Plaintiff represented herself.

## DEFENDANTS

8. The First Defendant is **CARWORX AUTO**, a car dealership situated at 16 Marion Road, Amanzimtoti, KwaZulu-Natal and of which the further particulars are unknown (hereinafter referred to as "the First Defendant").
9. The Second Defendant is **KEVIN GOVINDAN**, the owner of the First Defendant which is situated at 16 Marion Road, Amanzimtoti, KwaZulu-Natal. (Hereinafter referred to as "the Second Defendant.")
10. The Second Defendant represented himself personally as well as 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 Defendants conduct is declared prohibited conduct in contravention of S15, S19, S54 (1)(2), of the Consumer Protection Act 68 of 2008; and
  - 12.2. To return the OPEL CORSA BAKKIE motor vehicle with registration number ND630006 to the Second Plaintiff's residence within 7 days after the judgment is granted; and
  - 12.3. To pronounce on liability of repair costs as claimed by the First Defendant;
  - 12.4. Directing the First Defendant to refrain from conducting future business in a manner that is inappropriate and to make any other order that the Consumer Tribunal deems necessary; and
  - 12.5. Further and / or alternative relief.

## BACKGROUND

13. On 2 October 2021, Second Plaintiff took her motor vehicle (OPEL CORSA BAKKIE )with engine number 6W0076702/ Chassis Number ADMXF80JH6445377 and registration number ND630006) to the First Defendant's business premises for it to be repaired as it was jerking while being driven.
14. The Second Plaintiff and the Second Defendant agreed that the Second Defendant would repair the motor vehicle after a diagnostic assessment was done.
15. On 8 October 2021 Second Defendant informed Second Plaintiff that a payment of R 1,500.00 must be paid for the repairs. The Second Defendant duly paid this amount to the Second Defendant in cash as the Second Defendant alleged that his card payment machine was not working.
16. On 24 December 2021, the Second Defendant delivered the vehicle to the Second Plaintiff's home and informed her that it was fully repaired. The Second Defendant then requested that the Second Plaintiff give him a lift back to his home, which she did. After dropping off the Second Defendant at his residence, the vehicle broke down. The Second Plaintiff immediately called the Second Defendant who then came and towed the vehicle back to his workshop. At this stage, the Second Plaintiff paid the Second Defendant a further amount of R 2,640.00 in cash as he requested. The Second Plaintiff requested a receipt for the payment however Second Defendant never provided her with one.
17. On 24 December 2021 Second Defendant informed Second Plaintiff that he will sort out the fault on the vehicle as the repair he did was still under warranty. The Second Defendant further stated that he suspected some fault which he could have overlooked on his part.
18. Five months later, on or about 1 May 2022, the Second Plaintiff received a call from the Second Defendant informing her that the vehicle was ready for collection. Second Defendant did not indicate what the mechanical issue with the vehicle was or the nature of the repairs. Following the Second Defendant's request to collect the car, Second Plaintiff went to collect the vehicle with her husband. However, when she got there, she found that the vehicle was not ready for collection, was not drivable and the engine was not starting.

19. On the same date 1 May 2022 an argument ensued between Second Plaintiff's husband and the Second Defendant due to the vehicle not being repaired, this resulted in Second Plaintiff's husband being stabbed by the Second Defendant's son at the business premises of the First Defendant. A criminal case was opened by the Second Plaintiff and her husband with the South African Police Services in this regard.
20. On 13 June 2022, Second Plaintiff reported the complaint to the Motor Industry Ombudsman of South Africa (MIOSA). MIOSA investigated the complaint and requested the Second Defendant to provide them with copies of the assessment reports, estimates, invoices, and proof of payments for the repairs carried out on the vehicle. The Defendants failed to provide the required information. Consequently, the investigation by MIOSA could not be completed.
21. On 4 July 2023, Second Plaintiff lodged a complaint with the office of KwaZulu-Natal Consumer Protector as months had passed and the Defendants' failed to advise her on state of her vehicle.
22. On 8 August 2023, the Investigator of the Office of the First Plaintiff, namely Mr. S. Ngubo held a meeting with both parties. At the meeting, the Second Defendant produced an invoice to be paid by Second Plaintiff which included storage fees. This was the first time that this invoice had been produced by the Second Defendant to the Second Plaintiff. The Investigator requested the Second Defendant to provide the documents/quotation/invoices to the Second Plaintiff proving that Second Plaintiff was informed that the vehicle was ready for collection and that storage fees would be charged if not collected during the agreed date, and further requested invoices proving that the Defendant purchased motor parts and carried out the repairs on the vehicle. Second Defendant promised to provide the information by no later than the 14 August 2023 but failed to provide all the information.
23. On 15 September 2023 the Second Defendant emailed an invoice to the Office of the Consumer Protector as proof that he purchased motor parts from Isipingo Panel Automotive & Panel Beaters on 28 December 2021 and carried out repairs on the vehicle.
24. On 19 September 2023, the Investigator visited Isipingo Automotive & Panel Beaters to inquire about the motor parts which were sold to the Second Defendant. A Mr. Hassan the Manager confirmed that they sold motor parts to the Second Defendant but could not confirm which motor vehicle and refused to indicate why

he sold motor parts as he was not a motor parts supplier. He further refused to confirm if the parts sold were new or second hand.

25. In contrast to the Second Defendant stating that he purchased motor parts on 28 December 2021 the Second Plaintiff was in possession of WhatsApp messages from the Second Defendant during this time indicating that he was still searching for motor parts for her motor vehicle repairs to be done after the alleged purchase of parts.
26. The Defendants were unwilling to resolve the matter and Summons was issued against the First and Second Defendants on 8 December 2023. The Defendant's failed to defend the Second Plaintiff's claim.

#### **THE HEARING**

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

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

28. On the date of the hearing being 1 February 2024, the Second Defendant appeared in person on behalf of himself and the First Defendant and the First Plaintiff were able to successfully mediate the matter between the parties. This culminated in the parties agreeing to and signing a Settlement Agreement which is annexed hereto marked "Annexure A."

**ORDER**

29. The Settlement Agreement entered between the parties under case number KZNCT 22/2023, is accepted and hereby made an ORDER of the KwaZulu-Natal Consumer Tribunal. See Annexure "A."

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**Ms. N. Nursoo**

**MEMBER**

Ms. N. Cawe (Deputy Chairperson) and Ms. A. Sewpersad Alternative Deputy Chairperson and Presiding Member) concurred.

# In the KwaZulu Natal Consumer Tribunal DURBAN, KWA ZULU NATAL

Case Number: KZNCT 22/2023

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR FIRST PLAINTIFF

FRILE PHILISWE CELE

SECOND PLAINTIFF

AND

CARWORX AUTO

FIRST DEFENDANT

KEVIN GOVINDAN

SECOND DEFENDANT

## SETTLEMENT AGREEMENT

WHEREAS the First and Second Plaintiffs have referred a dispute to the KwaZulu Natal Consumer Tribunal under case no, KZNCT 22/2023 which is set down for hearing at Durban, KwaZulu Natal at 9h00 on the 1st February 2024.

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

## THE AGREEMENT

- 1.1 The First and Second Defendants jointly will return the motor vehicle, an OPEL CORSA BAKKIE with engine no 1W0016702 and registration F.P. A



number ND630006 to the Second Plaintiff on the 2nd day of February 2024. by no later than 9am.

1.2 The First and Second Defendants agree to waive all claims for repairs and storage fees.


1.3 The First and Defendant (Second) agree that no mechanical components or parts will be removed from the motor vehicle. <sup>F.P.</sup>


1.4 This settlement agreement will become binding and enforceable once it has been signed by the First and Second Defendants and accepted by the Second Plaintiff.

1.5 The parties to this agreement fully understand the contents above and agree that the settlement agreement will be made an order of the KwaZulu Natal Consumer Tribunal.

Dated at DURBAN this 1st day of February 2024

  
FIRST PLAINTIFF

  
SECOND PLAINTIFF

  
FIRST DEFENDANT  
SECOND DEFENDANT

F.P.

**IN THE KWA ZULU NATAL CONSUMER TRIBUNAL DURBAN, KWA ZULU  
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**CASE NUMBER : KZNCT 22/2023**

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**THE AGREEMENT**

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- 1.2 The First and Second Defendant agree to waiver all claims for repairs and storage fees.
- 1.3 The First and Second Defendant agree that no mechanical components or parts will be removed from the motor vehicle.

1.4 The settlement agreement will become binding and enforceable once it has been signed by the First and second Defendants and accepted by the Second Plaintiff.

1.5 The parties to this agreement fully understand the contents above and agree that the settlement agreement will be made an order of the KwaZulu Natal Consumer tribunal.

Dated at DURBAN this 1<sup>st</sup> day of February 2024

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**FIRST PLAINTIFF**

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**SECOND PLAINTIFF**

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**FIRST DEFENDANT**

**SECOND DEFENDANT**