

IN THE KWAZULU NATAL CONSUMER TRIBUNAL
HELD IN DURBAN

Case Number: KZNCT11/2024

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

CLARE GAIL ROSS

SECOND PLAINTIFF

(Name of the Consumer)

and

ALINE AUTO

FIRST DEFENDANT

MOHAMMED TOURIQ

SECOND DEFENDANT

SOUTH COAST USED CARS

THIRD DEFENDANT

Coram:

Prof B. Dumisa – Chairperson & Presiding Member

Ms P. Dabideen – Member

Adv R Hand – Member

Date of Hearing – 6 August 2024

Date of Judgment – 17 September 2024

JUDGEMENT AND REASONS

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 Plaintiffs Investigation Report was deposited to by Ms Sanelisiwe Kleinbooi, 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 **Clare Gail Ross**, a major female, who resides at Port Shepstone 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 Respondents on the 24th January 2024
7. At the hearing, the Second Plaintiff represented herself.

RESPONDENT

- 8.1 The First Defendant is Aline Auto , with its principal place of business situated at 429 National Road Margate which address it has chosen as its domicilium citandi et executandi (hereinafter referred to as "the First Defendant").
- 8.2 The Second Defendant is Mohammed Touriq , with his principal place of business situated at 429 National Road Margate which address he has chosen as its domicilium citandi et executandi (hereinafter referred to as "the Second Defendant").
- 8.3 The Third Defendant is South Coast Used Cars , with his principal place of business situated at 429 National Road Margate which address it has chosen as its domicilium citandi et executandi (hereinafter referred to as "the Third Defendant").

8.4 The Second Defendant attended the hearing in his personal capacity and confirmed that he was the sole owner of the First and Third Defendant and was duly authorised to represent and sign all documents on behalf of the First and Third Defendants.

APPLICATION TYPE AND ORDER SOUGHT

9.1 This KZN Consumer Tribunal (hereinafter referred to as "the Tribunal) derives the jurisdiction for hearing this matter under Sections 10 and 21 of the KwaZulu-Natal Consumer Protection Act, 4 of 2013 (the KZNCPA). This matter is in terms of Section 4(5)(a), Section 15, Section 54(1) and Section 65(2)(b) and (c), of the Consumer Protection Act No 68 of 2008 (the CPA).

9.2 The Second Plaintiff sought an order against the Respondent in the following terms:

9.2.1 The Defendant's conduct is declared prohibited conduct in contravention of Section 4, Section 51, Section 54, Section 55and Section 56 of the Consumer Protection Act 68 of 2008

9.2.2 Directing the Respondent to refund the Second Plaintiff the full amount of R100 000.00 (One Hundred Thousand Rand) being the total amount paid by the Second Plaintiff to the Defendants;

9.2.3 Directing the Defendants to pay interest at the prescribed rate a tempore morae;

9.2.4 The sale agreement entered into between the Second Plaintiff and the Defendants and all subsequent agreements be cancelled

9.2.5 To order the Defendants to pay all the above payments within 15 days of the judgement to the Second Plaintiffs bank account

9.2.6 Directing the Defendants to refrain from conducting future business in a manner that amounts to prohibited conduct

9.2.7 Directing the Defendants to pay an administrative penalty and/ or making any other appropriate order contemplated under section 4(2)(b) (i)of the CPA

9.2.8 Further or alternative relief

MATTERS TO BE DECIDED

- 10 The Tribunal has to decide whether:
 - 10.1 The Defendant breached the provisions of the Act as alleged; and
 - 10.2 The appropriate relief is to be granted.

BACKGROUND

- 11 The Second Plaintiff submitted as follows:
 - 11.1.1 On or about the 22nd June 2023 the Second Plaintiff and Defendants entered into an agreement and the material terms of which were as follows :

11.1.2 The Second Plaintiff would purchase a preowned Renault Megane 2016 with registration number ND 58072 and VIN Number VFIRFB00456010406 from the Defendants at a total cost of R120 000,00 (One Hundred and Twenty Thousand Rand).

11.1.3 The Defendants had at all relevant times assured the Second Plaintiff that the vehicle was fit for its intended purpose.

11.1.4 On the 28th of June 2024 the Second Plaintiff returned the vehicle to the Defendants to complete the COR and roadworthy tests .

11.1.5 A few days later the Second Plaintiff was advised that her vehicle was damaged whilst in the possession of the Defendants. The Defendants undertook to repair the vehicle and restore possession to the Second Plaintiff.

11.1.6 After months of delay in returning the vehicle to Second Plaintiff the parties agreed to cancel the sale. The Defendants repaid an amount of R20 000.00 (Twenty Thousand rand) to the Second Plaintiff and undertook to pay the balance of R100 000,00 shortly thereafter .

11.2 The Second Plaintiff pursued the Defendants for the balance but after months of frustration was unable to obtain the balance of the refund of R100 000,00(One Hundred Thousand Rand) from the Defendants. The Second Plaintiff was forced therefore to approach the First Plaintiff with her complaint.

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT

12 The First Plaintiff submitted that all attempts to resolve this complaint amicably had failed:

12.1 The Defendants whilst admitting liability had failed to cooperate any further with the First Plaintiff,

12.2 Based on the Defendants failure to cooperate with the First Plaintiff, the latter decided to refer this matter to the KZN Consumer Tribunal for adjudication.

THE HEARING

13 At the hearing, on the 6th of August 2024 the First Plaintiff informed the Chairperson of the KZN Consumer Tribunal that the Defendants have agreed to Consent to Judgement and the Tribunal was requested to make the Consent to Judgement an order of the KZN Consumer Tribunal .

14 The Tribunal having perused the Consent to Judgement and being satisfied with the Consent hereby makes this Consent to Judgement an Order of the Tribunal.

ORDER

15 The Consent to Judgement , on case number KZNCT11/2024, is hereby made an ORDER of this KwaZulu-Natal Consumer Tribunal. See Annexure A .

DATED ON THIS 17 TH September DAY OF 2024



Mrs P Dabideen

Prof B Dumisa(Chairperson) and Adv R Hand (Member) concurred.