

IN THE KWAZULU NATAL CONSUMER TRIBUNAL
HELD IN KOKSTAD

Case Number KZNCT15/2024

In the matter between:

KWAZULU NATAL CONSUMER PROTECTOR **FIRST PLAINTIFF**
HAKO TABISA **SECOND PLAINTIFF**

and

KOKSTAD DIFF AND GEARBOX **FIRST DEFENDANT**
FEROZE STEVENS **SECOND DEFENDANT**

Corum:

Prof B. Dumisa - *Chairperson & Presiding Member*

Ms. N Cawe - *Deputy Chairperson*

Adv. N. Nursoo - *Member*

Date of Hearing - *15 October 2024*

Date of Judgment - *29 October 2024*

JUDGMENT 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 Plaintiff's Investigation Report was deposited to by **Ms. VANESSA SHABANGU**, an Investigator and 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 the matter, is **TABISA HAKO**, a major female, who is a resident of Mthatha, in the Province of Eastern Cape (hereinafter referred to as "the Second Plaintiff" or "the Consumer").
6. The Second Plaintiff lodged her complaint against the Defendants on the 13 July 2023.
7. At the hearing, the Second Plaintiff represented herself.

DEFENDANTS:

FIRST DEFENDANT

8. The First Defendant is **KOKSTAD DIFF AND GEARBOX**, a business with its principal place of business situated at 2 Scott Street, Kokstad (hereinafter referred to as "the First Defendant")

SECOND DEFENDANT

9. The Second Defendant is **FEROZE STEVENS**, the owner of the First Defendant, with his residential address being the same as the First Defendant.
10. The Defendants did not attend despite being properly notified to attend the hearing. The Tribunal was satisfied that the Defendants were aware of the matter proceeding and that it was entitled to proceed with the matter and hence the matter was heard on a default basis.
11. The KZN Consumer Tribunal (hereinafter referred to as "the Tribunal") derives its 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).
12. The Second Plaintiff sought an order against the Defendants in the following terms:
 - 12.1 The Defendants conduct is declared prohibited conduct in contravention of **S4, S15, S54, S65(2)(b)(c), and S67(1)** of the Consumer Protection Act 68 of 2008;
 - 12.2 To refund to the Second Plaintiff the amount of **R 21 418.70 (Twenty one thousand four hundred and eighteen and seventy cents)** being the total amount paid to the Defendants by the Second Plaintiff or any other amount determined by the Consumer Tribunal;
 - 12.3 Interest on the amount referred to in (12.2) above at the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975;
 - 12.4 To order the Defendants to make the vehicle with description **Nissan QashQai with registration number HHP 664 GP (the vehicle)** belonging to the Second Plaintiff available immediately or within the period determined by the Consumer Tribunal;

- 12.5 The Second Plaintiff must, within the time specified by the Consumer Tribunal, collect the car from the Defendants premises in the condition it was at the time it was towed there accompanied by either the South African Police Services or the Sheriff of the Court;
- 12.6 To order the Defendants to pay all of the above payments within 15 days of the judgment to the Second Plaintiffs bank account;
- 12.7 Directing the Defendants to refrain from conducting future business in a manner that amounts to prohibited conduct;
- 12.8 Directing the Defendants to pay an administrative penalty and / or making any other appropriate order contemplated under section 4(2)(b)(ii) of the CPA;
- 12.9 Further or alternative relief.

MATTERS TO BE DECIDED:

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

BACKGROUND:

14. The Second Plaintiff submitted as follows:
 - 14.1 During or about April / May 2020, she took the gearbox of her motor vehicle (Nissan Qashqui Registration No: HPP 664 GP) to the Defendants' to be repaired.

- 14.2 The Second Defendant informed Second Plaintiff that the cost of the repair would be R 6,000.00. The Second Plaintiff paid the said amount in to the Defendants FNB account.
- 14.3 The Second Defendant then contacted the Second Plaintiff and informed her that the gearbox had been repaired and that she could collect it.
- 14.4 After collection of the gearbox, the Second Plaintiff had the gearbox fitted by her own mechanic. When the gearbox was fitted, she test drove the motor vehicle and found that the gearbox was still not in proper working condition, despite the Second Defendant claiming that it had been repaired. Second Plaintiff stated that gears 4 and 5 were still not working.
- 14.5 The Second Plaintiff then towed the motor vehicle to the Defendants for it to be repaired (at her own cost of R 3,900.00). The Second Defendant agreed to repair the gearbox once again.
- 14.6 A few months later the Second Defendant called the Second Plaintiff to come fetch her motor vehicle as it had been repaired.
- 14.7 The Second Plaintiff then collected the motor vehicle and attempted to drive it back to her home, however she noticed that the gears were still not in proper working condition.
- 14.8 Second Plaintiff then called the Second Defendant and he came to collect the vehicle from her.
- 14.9 Thereafter the Second Plaintiff called the Second Defendant numerous times between the end of 2020 and 2022 enquiring when her vehicle would be ready, and the Second Defendant made one excuse after the for the next two years.

14.10 In 2022 the Second Defendant eventually informed Second Plaintiff that her motor vehicle was ready and that she could come collect it. On the day the Second Plaintiff was due to collect the motor vehicle Second Defendant informed the Second Plaintiff that her motor vehicle had no power and they were trying to fix it.

14.11 The Second Defendant then told the Second Plaintiff that there is something wrong with the engine of motor vehicle and that they needed R15,418.70 to fix it. The Second Plaintiff paid this amount to the Defendants.

14.12 Thereafter, the Second Plaintiff continued to call the Second Defendant to find out when her motor vehicle would be ready. She received no response, so she went to Defendants business premises and found her motor vehicle engine in pieces. The Defendants had not repaired the motor vehicle.

14.13 At the end of 2022, Second Plaintiff lodged a complaint with MIOSA (Motor Industry Ombud of South Africa). MIOSA tried to intervene but the Defendants' were not responsive. MIOSA then recommended she approach the Consumer Tribunal.

14.14 On 13 July 2023, the Second Plaintiff lodged her complaint with the First Plaintiff.

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT:

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

15.1 The Defendants failed to cooperate with the First Plaintiff;

15.2 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:

15.3 The hearing was held on 15 October 2024.

15.4 The Hearing was held both physically and virtually at and via 75 Hope Street, Kokstad at the Kokstad Municipality Offices.

15.5 The Defendants had not indicated their intention to defend the matter, nor did they attend the hearing.

15.6 At the hearing, the First Plaintiff and the Second Plaintiff confirmed the details of the complaint as contained under the background above.

APPLICABLE SECTIONS OF THE CONSUMER PROTECTION ACT 68 OF 2008:

16. Section 54

Consumer's rights to demand quality service

(1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to-

(a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services; having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.

(2) If a supplier fails to perform a service to the standards contemplated in subsection (1), the Consumer may require the supplier to either-

- (a) *remedy any defect in the quality of the services performed or goods supplied; or*
- (b) *refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.*

17. **Section 65**

- (3) *When a supplier has possession of any prepayment, deposit, membership fee, or other money, or any other property belonging to or ordinarily under the control of a consumer, the supplier –*
 - (a) *must not treat that property as being the property of the supplier;*
 - (b) *in the handling, safeguarding and utilisation of that property, must exercise the degree of care, diligence and skill that can reasonably be expected of a person responsible for managing any property belonging to another person; and*
 - (c) *is liable to the owner of the property for any loss resulting from a failure to comply with paragraph (a) or (b).*

18. **Section 67**

Return of parts and materials

- (1) *When a supplier is authorised to perform any service to any goods or property belonging to or ordinarily under the control of the consumer, the supplier must –*
 - (a) *retain any parts or components removed from any goods or property in the course of any repair or maintenance work;*
 - (b) *keep those parts or components separate from parts removed from other goods or property; and*
 - (c) *return those parts or components to the consumer in a reasonably clean container, unless the consumer declined the return of any such parts or material.*

CONSIDERATION OF THE EVIDENCE BEFORE THE TRIBUNAL:

19. It is common cause that the parties entered into an verbal agreement of contract in terms of which the Defendants, undertook repair of Second Plaintiff's gearbox and engine of her motor vehicle at a total cost of R 21,418.70.
20. The Second Plaintiff in accepting the quotation made payment of the amount of R 21,418.70 to the Defendants.
21. The Second Plaintiff had a reasonable expectation that the Defendant would complete the repair as per the Defendant's undertaking within a reasonable time.
22. It was solely based on these misrepresentations that the Second Plaintiff entered into the agreement with the Defendants.
23. The Tribunal must take cognisance of the many years long delay by the Second Defendant in which the Defendants were failing to repair the gearbox and engine, despite being paid to do so. Furthermore, the Defendants have failed in cooperate in resolving this matter. The Tribunal is left with no other presumption but that to date, the vehicle is not repaired and this is some 4 years later. Neither the Tribunal nor the Second Plaintiff had been afforded an explanation for the delay.
24. The Tribunal is therefore forced to conclude with no other alternative explanation from the Defendants' that the Defendants are incapable of completing this repair and that this type of conduct by the Defendants is a contemptuous disregard of the Second Plaintiff's rights and such conduct is tantamount to prohibited conduct as envisaged in the CPA.

25. **ORDER**

The Tribunal therefore grants an order against the Defendants in the following terms:

- 25.1 The Defendants conduct is declared prohibited conduct in contravention of **S4, S15, S54, S65(2)(b)(c), and S67(1)** of the Consumer Protection Act 68 of 2008;
- 25.2 The Defendants are ordered to refund to the Second Plaintiff the amount of **R 21 418.70 (Twenty one thousand four hundred and eighteen and seventy cents)** being the total amount paid to the Defendants by the Second Plaintiff.
- 25.3 The Defendant is ordered to pay interest on the amount referred to in (25.3) above at the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975;
- 25.4 The Defendants are ordered to make payment in respect of paragraphs 25.2 and 25.3 within **15** days of the grant of this order, into the Second Plaintiff's Bank Account as follows:

Account number: **080864198**
Bank: **Standard Bank**
Account Type: **Cheque account**
Account Holder: **Tabisa Hako**

- 25.5 The Defendants are ordered to immediately make the Second Plaintiff's motor vehicle, with description **Nissan QashQai with registration number HHP 664 GP (the vehicle)**, inclusive of gearbox and engine, available for collection by the Second Plaintiff.

25.6 The Defendants are warned henceforth to refrain from conducting future business in the manner that is the subject of this complaint and in contravention of the CPA.

DATED ON THIS 5TH DAY OF OCTOBER 2024.

ADV. N. NURSOO – MEMBER

Prof. B. Dumisa (Chairperson) and Ms. N. Cawe (Deputy Chairperson) concurred.