

IN THE KWAZULU-NATAL CONSUMER TRIBUNAL  
HELD IN NEWCASTLE

Case number: KZNCT02/2024

In the matter between:

**KWAZULU-NATAL CONSUMER PROTECTOR**  
**MOHAMMED SHABIER GOOLAM**  
(Name of the Consumer)

**FIRST PLAINTIFF**  
**SECOND PLAINTIFF**

and

**MST AUTO (PTY) LTD**

**FIRST DEFENDANT**

**WESBANK DIVISION OF FIRSTRAND BANK LTD**

**SECOND DEFENDANT**

Coram:

Prof. B Dumisa - Chairperson & Presiding Member  
Adv R Hand - Member  
Adv N. Nursoo - Member

Date of Hearing - 25 April 2024

Date of Settlement Order - 02 May 2024

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**SETTLEMENT ORDER**

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**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 Investigator's Report was compiled by Ms Ntumiseng Nketlana, an Assistant Director within EDTEA who is also an Investigator within the First Plaintiff's office.

## **SECOND PLAINTIFF**

5. The Consumer, who is the Second Plaintiff in this matter is **Mr Mohammed Shabier Goolam**, an adult male who is a member of Majuba Diesel CC, a close corporation which carries on business at 2A Bridger Street, Newcastle, in the Province of KwaZulu-Natal (hereinafter referred to as "the Second Plaintiff" or "the Consumer").
6. The Second Plaintiff lodged his complaint against the Defendants on the 30<sup>th</sup> of January 2024.
7. The Second Plaintiff deposed his Founding Affidavit, wherein he fully explained why this matter had to finally be adjudicated by the Tribunal.
8. At the Hearing, the Second Plaintiff was represented by Neven Singh Attorneys.

## DEFENDANTS

### FIRST DEFENDANT

9. The First Defendant in this matter is **MST AUTO (PTY) LTD**, a company duly registered in terms of the company laws of the Republic of South Africa, with its principal place of business situated at 22 Sutherland Street, Newcastle, in the Province of KwaZulu-Natal (the "First Defendant"). At the hearing the First Defendant was represented by KM Chetty Attorneys.

### SECOND DEFENDANT

10. The Second Defendant is **WESBANK** a division of **FirstRand Bank Ltd**. An Authorised Financial Services and Registered Credit Provider NCRC20, with Registration No.1929/001225/06. There are no claims against the Second Defendant who is only joined to the main action merely because of their interest in the complaint, in that it is the financial that financed the purchase of the vehicle.

## BACKGROUND

11. On or about the 26<sup>th</sup> of August 2022 the Second Plaintiff, the Consumer, purchased a **2018 Volkswagen 3.0 Tdi Extreme** with registration number **NN102209** from the First Defendant:

- 11.1 The transaction was entered into between the First Defendant and the Second Plaintiff in the latter's capacity as a member of Majuba Diesel CC. The Second Plaintiff is the end user of the vehicle.
- 11.2 The total selling price was R639 695.00 (Six Hundred and Thirty-Nine Thousand Six Hundred and Ninety Five Rand).
- 11.3 The Odometer reading on the vehicle was 96700 kilometres.
- 11.4 The vehicle purchase was financed by the Second Defendant.

11.5 Within seven days after taking delivery of the vehicle, on or about the 2<sup>nd</sup> of September 2022, the Second Plaintiff approached the First Defendant and advised that there were the were the following faults with the vehicle and that the Second Plaintiff wished to cancel the agreement and return the vehicle, namely:

11.5.1 An oil leak;

11.5.2 Noise emanating from the engine/ drive train;

11.5.3 Noise emanating from the steering;

11.5.4 A cover which became loose; and

11.5.5 Intermittent issue with the fog lights.

11.6 The First Defendant did not dispute the abovementioned faults; and undertook to repair them. The vehicle was sent to Newcastle VW for the above faults to be investigated and Newcastle VW sent a defect report and quotation for the repair of the following faults, namely, the oil leak, the cover to be replaced and the noise emanating from the camshafts and the noise emanating from the rear wheel bearings.

11.7 The First Defendant accepted the quotation in respect of the oil leak and replacement of the cover but refused to accept the quotation of for the repairs to the camshaft and rear wheel bearings as this was a large sum and the First Defendant then needed this be investigated further.

11.8 At the insistence of the First Defendant, the vehicle was driven to two other Volkswagen dealerships in Durban for a diagnostic report on the noise emanating from the engine/ drive train/ camshafts. The verbal diagnostic reports were obtained from Weiss Auto and Hoopers and both had similar opinions as Newcastle VW. It was further advised that if the repairs are not undertaken immediately, there is a risk of complete gearbox/ engine failure. A booking was made at Weiss Auto on 06 October 2022 for an investigation and a written report to be compiled but the First Defendant failed to take the car for the investigation.

## THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS MATTER

12. The Second Plaintiff, Consumer, complains that

- 12.1 He informed the First Defendant within a period of seven days of accepting delivery of the motor vehicle, that the said vehicle is of sub-standard quality alternatively that the vehicle is defective and that he wants to cancel the agreement and return the motor vehicle.
- 12.2 Despite the First Defendant giving an undertaking to repair the vehicle, it failed and / or neglected to repair the vehicle. The vehicle was left with the First Defendant in November in November 2022 for the necessary repairs to be effected and to date hereof the repairs have not been effected and the vehicle has not delivered to the Second Plaintiff.
- 12.3 The Second Plaintiff reported the matter to the Motor Industry Ombud of South Africa, MIOSA, on the 29<sup>th</sup> of September 2023, who conducted their own investigation, and found in favour of the Second Plaintiff, ruling that the First Defendant must repair the vehicle as per the quotation by Newcastle VW. But the First Defendants refused to cooperate with the MIOSA Investigation; and also totally ignored MIOSA recommendations.
- 12.4 This was the reason the Second Plaintiff resorted to the First Plaintiff, KZN Consumer Protector's office, for redress. The First Plaintiff investigated the matter further and tried to mediate this matter between the parties, but their efforts to mediate proved fruitless. It was thereafter that the First Plaintiff decided to refer this matter to the KZN Consumer Tribunal for adjudication.

## APPLICATION TYPE AND ORDER SOUGHT

13. 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).

14. 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").
15. The Consumer's prayers were for:
  - 15.1 The Declaration of the Defendants 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;
  - 15.2 The cancellation of the sales agreement;
  - 15.3 Directing that the First Defendant refund the Second Plaintiff the amount of **R639695.00 (Six Hundred and Thirty-Nine Thousand Six Hundred and Ninety-Five Rand)** being the total amount paid as the purchase price, directly to the bank account of the Second Defendant; .
  - 15.4 To refund the amount of R83 000 (Eighty-Three Thousand Rand) paid as a deposit to be paid to the Second Plaintiff directly;
  - 15.5 Interest on the amounts referred to in 15.3 and 15.4 above at the mora rate in terms of the mora rate in terms of the Prescribed Rate of Interest Act 53 of 1975;
  - 15.6 To order the Defendant to pay all of the above payments within 15 days of the judgment.
  - 15.7 To order the Defendant to pay the legal costs of the Second Plaintiff's only if the matter is defended.
  - 15.8 To order the Defendant to pay an administrative fine that the KwaZulu-Natal Consumer Tribunal finds appropriate;
  - 15.9 Further or alternative relief.

## **SUMMONS SERVED ON THE DEFENDANTS**

16. On the 2nd of April 2024, the Summons was served on the Defendants, indicating the KZN Consumer Tribunal Hearing set down date of the 25<sup>th</sup> of April 2024.
17. The Defendants filed their NOTICE OF INTENTION TO DEFEND, with an Opposing Affidavit, on the 19<sup>th</sup> of April 2024.

## **THE HEARING**

18. The matter was set down for hearing, on merits, on the 25<sup>th</sup> of April 2024.
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.
20. The Tribunal places it on record that, whilst it will confirm the parties' Settlement Agreement as the Settlement Order of the Tribunal, because the parties have so agreed; it is unfortunate that the Tribunal will no longer be able to appropriately deal with the wide-ranging gross breaches of the CPA by the Defendants. In short, the Second Plaintiff has been short-changed through this Settlement Agreement; but the Tribunal has no intention of overriding the wishes of the parties, hence will make this Settlement Agreement an Order of the Tribunal.

## **ORDER**

21. The Settlement Agreement between the parties, on case number KZNCT02/2024, is hereby made an ORDER of this KwaZulu-Natal Consumer Tribunal. See Annexure A.

22. Dr A Jamooldeen is confirmed as Surety and Co-Principal Debtor on this Settlement Order.

**DATED ON THIS 2nd DAY OF MAY 2024**

*[Signed]*

**Prof B Dumisa**

**PRESIDING TRIBUNAL MEMBER**

Adv N Nursoo (Member) CONCURRING and Adv R Hand DISSENTING

## ANNEXURE A

IN THE KWAZULU NATAL TRIBUNAL HELD AT AMAJUBA DISTRICT

CASE NUMBER KZNCT02/2024

**In the matter between:**

**THE KWAZULU NATAL  
CONSUMER PROTECTOR**

**FIRST PLAINTIFF**

**MOHAMMED SHABIER GOOLAM  
FOR MAJUBA DIESEL CC**

**SECOND PLAINTIFF**

**MST AUTO NEWCASTLE**

**FIRST DEFENDANT**

**WESTBANK DIVISION OF FIRSTRAND**

**BANK LIMITED**

**SECOND DEFENDANT**

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### **SETTLEMENT AGREEMENT**

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**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.

**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 agree that judgement be recorded in favour of the Second Plaintiff as set out below:

*MS* *SHW*  
*MS*

1.

The First Defendant agrees to pay to the Second Plaintiff the sum of R83 000.00 being the deposit paid by the Second Plaintiff in respect of the motor vehicle that is the subject of the dispute.

2.

The above-mentioned payment to be paid within 30 days of date hereof.

3.

The First Defendant to pay to the Second Defendant such amount as maybe due to the Second Defendant in respect of the balance outstanding plus interest calculated up to date of settlement within 30 days from date hereof.

4.

The First Defendant shall be entitled to negotiate a settlement amount with the Second Defendant provided that such settlement absorbs the Second Plaintiff from all liability to the Second Defendant.

5.

The Second Plaintiff will render his full cooperation to ensure that the vehicle is transferred to the First Defendant upon the First Defendant complying with the provisions of clause 1,2,3 and 4 above.



6.

The Second Plaintiff warrants that this agreement is binding upon Majuba Diesel CC.

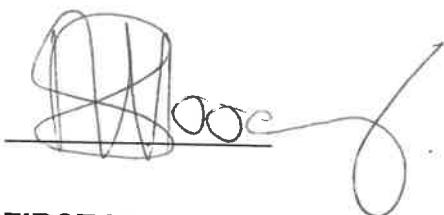
7.

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 of this agreement was made an order of the KwaZulu Natal Consumer Tribunal.

8.

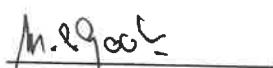
The parties further agree that the terms and conditions of this agreement will be made an order of the KwaZulu Natal Consumer Tribunal.

Dated at AMAJUBA on this 25<sup>TH</sup> day of APRIL 2024.



**FIRST PLAINTIFF**

**REPRESENTED BY RYAN MOODLEY**



**MOHAMMED SHABIER GOOLAM**  
**FOR MAJUBA DIESEL CC**  
**SECOND PLAINTIFF**



**MST AUTO NEWCASTLE**  
**FIRST DEFENDANT**