

IN THE KWAZULU-NATAL CONSUMER TRIBUNAL  
HELD IN DURBAN

Case number: KZNCT13/2024

In the matter between:

KWAZULU-NATAL CONSUMER PROTECTOR  
NONHLANHLA MAVIS MKHIZE  
(Name of the Consumer)

FIRST PLAINTIFF  
SECOND PLAINTIFF

and

BUMPER CLINIC  
REG NO 4330119480

FIRST DEFENDANT

TODD OOSTHUISEN

SECOND DEFENDANT

Coram:

Ms N Cawe - Deputy Chairperson & Presiding Member  
Mrs P Dabideen - Member  
Adv N Noorsoo Member

Date of Hearing - 7 August 2024

Date of Settlement Order - 15 August 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.

## **SECOND PLAINTIFF**

4. The Consumer, who is the Second Plaintiff in this matter is Ms Nonhlanhla Mavis Mkhize , a major female residing in Avoca , Durban, Kwa Zulu Natal(hereinafter referred to as "the Second Plaintiff" or "the Consumer").
5. The Second Plaintiff lodged her complaint against the Defendant's on the 9<sup>th</sup> April 2024.
6. The Second Plaintiff deposed to her Founding Affidavit, wherein she fully explained why this matter had to be finally adjudicated by the Tribunal.
7. At the Hearing, the Second Plaintiff represented herself.

## **DEFENDANTS**

### **FIRST DEFENDANT**

8. The First Defendant in this matter is **Bumper Clinic** , a company duly registered in terms of the Company Laws of the Republic of South Africa with Registration Number 4330119480 with its principal place of business situated at Unit D22 Henwood Drive ,Pinetown ,Kwa Zulu Natal in the Province of KwaZulu-Natal (the "First Defendant").

9. The Second Defendant is Todd Oosthuizen who is the General Manager of the First Defendant and is duly authorised to represent the First Defendant in these proceedings.

## 10 BACKGROUND

- 10.1 On the 13<sup>th</sup> September 2023 the Second Plaintiff approached the Defendant's to repair her accident-damaged RANGE ROVER vehicle bearing Registration Number ND 780058.
- 10.2 The parties agreed and accepted that the total cost of repair will be R61 000,00 (Sixty One Thousand Rand) comprising R50 000,00 (Fifty Thousand Rand) for the vehicle's body repairs and R11 000,00(Eleven Thousand Rand ) for the vehicle's engine repairs .The Consumer duly paid R61 000,00 to the First Defendant.
- 10.3 On the 23rd October 2023 the Second Plaintiff was notified by the Defendants that all repairs was completed . The Second Plaintiff on inspecting the vehicle brought to the Defendants attention that parts like the alphabets of the Range Rover name and the rear number plate were missing from the vehicle .It was also noted that many of the items the Defendant's were paid to do were not completed by the Defendant.
- 10.4 The Second Plaintiff also complained that whilst driving the vehicle from the Defendant's premises the bonnet of the vehicle flipped open and the vehicle started smoking and had to be towed back to the Defendant's premises for the complaints to be rectified .
- 10.5 The Second Plaintiff complained that pursuant to the vehicle being towed back to the Defendants premises her calls and messages to the Defendant's to remedy the problem was ignored .
- 10.6 The Second Plaintiff eventually lodged a Complaint with the KZN Second Plaintiff 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

11 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).

12 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").

13 The Second Plaintiff's prayers were for:

- a. The Declaration of the Defendant's conduct as prohibited conduct, and in contravention of Section 57 of the Consumer Protection Act 68 of 2008, the CPA;
- b. Directing that the Defendant's refund the Second Plaintiff the amount of **R11 000.00** (**Eleven Thousand Rand**) being the balance of the amount paid;
- c. Directing the Defendant to refrain from conducting future business in a manner that amounts to prohibited conduct.
- d. 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
- e. Further and/or alternative relief

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

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

## **SUMMONS SERVED ON THE DEFENDANTS**

15 The Summons was served on the Defendants, indicating the KZN Consumer Tribunal Hearing was set down date of the 7 th August 2024.

## **THE HEARING**

16 At the hearing on 7<sup>th</sup> August 2024 , the First Plaintiff informed the Deputy 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.

17 The Tribunal having perused the Settlement Agreement; and being satisfied with it makes this Settlement Agreement an Order of the Tribunal.

## **ORDER**

18 The Settlement Agreement between the parties, on case number KZNCT13/2024, is hereby made an ORDER of this KwaZulu-Natal Consumer Tribunal. See Annexure A .

**DATED ON THIS 14 th DAY OF August 2024**



*[Signed]*

**Ms N CAWE**

**Deputy Chair and Presiding Member**

Adv N Nursoo (Tribunal Member) and Mrs P Dabideen (Tribunal Member) concurring

## ANNEXURE A

IN THE KWAZULU NATAL TRIBUNAL HELD AT THE ETHEKWENI DISTRICT

CASE NUMBER KZNCT 13/2024

In the matter between:

THE KWAZULU NATAL

CONSUMER PROTECTOR

FIRST PLAINTIFF

NONHLANHLA MAVIS MKHIZE

SECOND PLAINTIFF

BUMPER CLINIC

(REG NO 4330119480)

FIRST DEFENDANT

TODD OOSTHUISEN

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:

1.

*TRSO*

*N. M. Mkhize*

*N. M.*

The First and Second Defendants accepts prohibited conduct and agrees to pay to the Second Plaintiff the sum of R11 000.00 (eleven thousand rand) being the refund amount for monies paid by the Second Plaintiff in respect of the motor vehicle that is the subject of the dispute.

2.

The above-mentioned payment is to be paid in two installments of R5500.00 (five thousand five hundred rand) payable on the 31<sup>st</sup> of August 2024 and thereafter on the 30<sup>th</sup> of September 2024.

3.

Should the First Defendant fail to pay as set in point 1 and 2 above, the full amount of R11 000.00 (eleven thousand Rand) shall immediately become due, owing and payable to the second plaintiff.

4.

The Second Defendant namely, Mr Todd agrees to be co-principal debtor and surety on behalf of Bumper Clinic for the full amount of the principal debt. In the event of the abovementioned payment not being made on the due date, the full amount outstanding will become due and payable by the First Defendant and Second Defendant immediately to the Second Plaintiff.

5.

~TRSD~

Nrm

The First and Second Defendants will render his full cooperation to ensure that the vehicle is repaired within 30 days from the date this agreement is made on order of the Consumer Tribunal.

6.

The Defendants agree to carrying out the following repairs: -

- 6.1. Panel, paint, align and repair the full bonnet and bonnet catch;
- 6.2. Reset and reassemble the cradle;
- 6.3. Replace the bonnet decals;
- 6.4. Reassemble and set the left and right fenders; *(Signature)*
- 6.5. Reset the grids (left/right and center).

7.

The parties agree that upon completion of the repair work the Second Plaintiff will source an independent RMI approved panel beater at her own costs to conduct an overall assessment of the abovementioned work at the First Defendants work premises and if remedial work is required the Defendants will have seven days to complete such work.

8.

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.

*TR50*

*V:me*

9.

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 DURBAN on this 02 day of AUGUST 2024.

K. Mkhize

NONHLANHLA MAVIS MKHIZE  
SECOND PLAINTIFF

Todd Oosthuisen

TODD OOSTHUISEN  
FOR THE FIRST AND SECOND DEFENDANT

AP  
First Plaintiff