

**IN THE KWAZULU-NATAL CONSUMER TRIBUNAL
HELD IN NEWCASTLE**

Case number: **KZNCT05/2024**

In the matter between:

**KWAZULU-NATAL CONSUMER PROTECTOR
BONGANI MIYA
(Name of the Consumer)**

**FIRST PLAINTIFF
SECOND PLAINTIFF**

and

PMB AUTOSALES

FIRST DEFENDANT

Coram:

| | | |
|------------------|---|--------------------------------|
| Ms A Sewpersad | – | Chairperson & Presiding Member |
| Mrs. P. Dabideen | – | Member |
| Adv R Hand | - | Member |

Date of Hearing - 16 April 2024

Date of Settlement Order - 23 May 2024

SETTLEMENT ORDER

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 **Mr BONGANI MIYA**, a major male residing in Ladysmith Kwa Zulu Natal(hereinafter referred to as "the Second Plaintiff" or "the Consumer").
5. The Second Plaintiff lodged his complaint against the Defendant on the 25 January 2024.
6. The Second Plaintiff deposed his Founding Affidavit, wherein he fully explained why this matter had to finally be adjudicated by the Tribunal.
7. At the Hearing, the Second Plaintiff represented himself.

DEFENDANTS

FIRST DEFENDANT

8. The First Defendant in this matter is **PMB AUTO SALES** , a business situated at 61 Boshoff Street Pietermaritzburg_ in the Province of KwaZulu-Natal (the "First Defendant").

BACKGROUND

9. On the 14th July 2023 the Second Plaintiff, the Consumer, purchased a **Toyota Hilux , 2013 model Reg no: ND426255** from the Defendants who assured him that the vehicle was mechanically sound:

9.1 The total sale price was R170 000.00 (One Hundred and Seventy Thousand Rand),

9.2 The Consumer made the full payment of **R199 990 (One Hundred and Ninety Nine Thousand Nine Hundred and Ninety Rand) via EFT on the 14 July 2023** This payment was made to bank account details belonging to the Defendant as provided by the Defendant.

9.3 The Consumer stated that on test driving the vehicle it was found to be jerking Defendant assured the Consumer that the issue is capable of being resolved and the vehicle was driveable nonetheless .The Consumer duly paid for the vehicle and took delivery of the vehicle with the understanding that the Consumer will return with the vehicle on a later date for the Defendant to attend to necessary repairs.

9.4 On 20 July 2023 the vehicle was delivered to Defendant to attend to repairs and after being assured the repairs were completed the Consumer uplifted the vehicle on 1 September 2023 . On 27 September 2023 the Consumer complained to the Defendant that there was no power in the vehicle .On the 4th October 2023 the Consumer demanded a refund of the purchase price which Defendant refused

9.5 The Consumer found the car had serious mechanical problems from the onset, and the Defendants gave the Consumer run-arounds without any solutions.

9.6 The Consumer eventually lodged a Complaint with the KZN Consumer 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

10. 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).
11. 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").
12. The Consumer's prayers were for:
 - 12.1 The Declaration of the Defendant's 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;
 - 12.2 The sale agreement be cancelled
 - 12.3 Directing that the Defendant refund the Second Plaintiff the amount of **R199 990 (One Hundred and Ninety Nine Thousand Nine Hundred and Ninety Rand)** being the total amount paid as the purchase price;
 - 12.4 Interest on the amount referred to in 12.3. above at the mora rate in terms of the Prescribed Rate Of Interest Act 53 of 1975
 - 12.5 To order the Defendant to pay the legal costs of the Second Plaintiff's only if the matter is defended.
 - 12.6 To order the Defendant to pay an administrative fine that the Kwa Zulu Natal Consumer Tribunal finds appropriate .

THE FIRST PLAINTIFF'S EFFORTS TO RESOLVE THIS COMPLAINT

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

SUMMONS SERVED ON THE DEFENDANTS

14. On the 2nd April 2024 , the Summons was served on the Defendants, indicating the KZN Consumer Tribunal Hearing was set down date on the 16th April 2024.

THE HEARING

15. At the hearing on 16th April 2024 , 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.
16. The Tribunal having perused the Settlement Agreement; and being satisfied with it makes this Settlement Agreement an Order of the Tribunal.

ORDER

17. The Settlement Agreement between the parties, on case number KZNCT05/2024, is hereby made an ORDER of this KwaZulu-Natal Consumer Tribunal. See Annexure A and Annexure B.

DATED ON THIS 23 DAY OF MAY 2024

Mrs P Dabideen

TRIBUNAL MEMBER

Ms A Sewpersad (Presiding Tribunal Member) and Adv R Hands concurring

ANNEXURE A

IN THE KWAZULU NATAL CONSUMER TRIBUNAL HELD AT DURBAN

CASE NUMBER: KZNCT05/2024

THE KWAZULU-NATAL CONSUMER PROTECTOR

FIRST PLAINTIFF

BONGANI MIYA

SECOND PLAINTIFF

PMB AUTO SALES

DEFENDANT

SETTLEMENT AGREEMENT

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 agreed to settle the complaint on the following terms:-

MBV



1. The Defendant hereby undertakes to cancel the sale agreement entered into with the Second Plaintiff.
2. The Defendant undertakes to refund the Second Plaintiff the amount of R170 000.00 (One Hundred and Seventy Thousand Rand), in full and final settlement of any and all claims which the Second Plaintiff may have against the Defendant by the 30th of April 2024.
3. The abovementioned payment of R 170 000.00 (One Hundred and Seventy Thousand Rand) will be paid directly to the Second Plaintiffs bank account as set out below:-

NEDBANK/ LAYSMITH BRANCH
ACCOUNT NUMBER: 1123136440
ACCOUNT HOLDER: B MIYA
4. The Defendant further undertakes to provide proof of payment as set out in point one and three above to the First and Second Plaintiff.
5. The parties will have no further claim against the each other.
6. 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

MBV



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.

7. 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 ____ day of April 2024.



First Plaintiff

Represented by Ryan Moodley



BONGANI MIYA

Second Plaintiff



15 APRIL 2024 on

**behalf of PMB AUTO
SALES**

Defendant