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**IN THE NATIONAL CONSUMER TRIBUNAL
HELD VIA ZOOM**

Case Number: **NCT/119746/2018/75(1)(b)**

In the matter between:

ELNA DE BEER

APPLICANT

and

**CAW ENTERPRISE SOLUTIONS (Pty) LTD
T/A ACD CJ KLEYN'S AUTO SERVICES**

RESPONDENT

Coram:

Prof B Dumisa - Presiding Tribunal Member

Ms. P Beck - Tribunal Member

Mr. A Potwana - Tribunal Member

Date of Hearing: 28 September 2020

Date of Judgement: 18 October 2020

JUDGMENT AND REASONS

APPLICANT

1. The Applicant is **ELNA DE BEER** ("the Applicant"), an adult female with a physical address at [...], George, in the Western Cape Province (hereinafter referred to as "**the Applicant**"). At the hearing, the Applicant was represented by her husband, Mr. Jack De Beer.

RESPONDENT

2. The Respondent is the **CAW ENTERPRISE SOLUTIONS (Pty) LTD** trading as **ACD KLEYN'S AUTO SERVICES**, a private company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal offices and workshop situated at 5 Nywerheid Street, George Industria 6536, in the Western Cape Province (hereinafter referred to as "**the Respondent**"). At the hearing, the Respondent was represented by Adrian Botes, an adult male director of the Respondent.

APPLICATION TYPE

3. This is an application in terms of Section 75(1)(b) of the Consumer Protection Act 68 of 2008, where the Applicant, with leave to refer of the Tribunal, seeks redress against the Respondent; and
4. The Applicant alleges breaches of Section 15(3) because the Respondent allegedly undertook costly diagnostic work and/or disassembly of the car without her pre-authorization.

APPLICABLE SECTIONS OF THE ACT

5. Section 75 **Referral to Tribunal**. Subsection 75(1)(b) reads
"If the Commission issues notice on non-referral in response to a complaint, other than on grounds contemplated in Section 116, the complainant concerned may refer the matter directly to –
(a)
(b) *the Tribunal, with leave of the Tribunal*
6. Section 15 **Pre-authorization of repair or maintenance services**. Subsection 15(3) reads
"A service provider to whom this section applies must not charge a consumer for preparing an estimate required in terms of subsection (2), including –
(a) *any cost of performing any diagnostic work, disassembly, or reassembly required in order to prepare an estimate; or*
(b) *any damage to or loss of material or parts in the course of preparing an estimate,*
unless, before preparing the estimate, the service provider has disclosed the price for preparing that estimate, and the consumer has approved it".

HEARING

7. This matter was heard virtually, via Zoom, on the 28th of September 2020.
8. The Applicant was represented by her husband, Mr. Jack De Beer.
9. The Respondent was represented by its director Mr. Adrian Botes.

APPLICANT'S SUBMISSIONS

10. The Applicant owned a 2006 model Volkswagen Transporter 2.5TDI 15-seater bus.
11. The Applicant used this bus for scholar transport, under the name Britz De Beer Vervoer.
12. In January 2018, when the car was about 486 634km, the car developed mechanical problems, which she described as follows:
 - 12.1 "In January 2018, when the car was at about 486 634km, the car developed mechanical problems, which the Applicant described as follows: *"It was losing coolant water which had to be topped-up regularly, and there was a strong indication of water being present in the sub-assembly oil (light grey colour) as was pointed out to me by a service advisor. I approached the ACD George CJ Kleyn's Auto Service (hereafter referred to as ACD) in an attempt to have the vehicle repaired. The faults were diagnosed by ACD, and a verbal cost estimate of between R13 000 and R15 000 was given to me upon which I agreed to."*
 - 12.2 On 22 January 2018, ACD commenced work on the vehicle on their premises. The repairs were completed on 1 February 2018;
 - 12.3 On 2 February 2018, she collected the car after paying the total repair costs of R9830.79 in full;
 - 12.4 She said the problems started within one kilometre after collecting the vehicle. The same issues she had before started all over again;
 - 12.5 The Respondent collected the car, on 12 February 2018, from the Applicant's premises to their (Respondent's) repair workshop;

- 12.6 The Applicant's core complaint was that the Respondent proceeded to strip the car presumably for problem diagnoses purposes; which culminated in a repair cost estimate of R59 278.94, for which a deposit of R42 000 was required;
- 12.7 The Applicant felt that the Respondent did what they were not requested to do when they stripped the car for engine diagnoses purposes;
- 12.8 The Applicant was aggrieved that the wrong diagnosis was made without her prior consent, hence not prepared to pay the amount demanded and/or the R150 per day storage fees demanded by the Respondent;
- 12.9 The Applicant wanted the car to be taken to an independent assessor and for an independent mechanic to repair the car; and
- 12.10 The Applicant also had other claims for consequential damages. She alleged that the Respondent owes her a replacement car's cost, while her car remained with the Respondent for repairs and during this dispute.

ASSESSMENT OF THIS MATTER BY BOTH MIOSA AND THE NCC

13. The Applicant referred the matter to the Motor Industry Ombudsman of South Africa (MIOSA) for redress.
14. MIOSA did its own investigations by contacting and interviewing both parties and relevant documents.
15. MIOSA concluded that the Respondent had followed the correct procedures and processes in diagnosing the real mechanical problems with the Applicant's car. The oil cooler and radiator had been repaired on the said car.
16. The Applicant referred the same matter to the National Consumer Commission (NCC), which also followed the same processes as the MIOSA and assessed the MIOSA report.
17. The NCC concluded, "*The Commission has assessed your complaint, as well as the MIOSA report and determined that the dispute raised in the complaint were addressed by the supplier. The issue in dispute is the assessment that must be conducted by an independent assessor, as you do not fully agree with the assessment done by the supplier. The Commission is of the view that you can do this process independently. As a result of the above, we will not pursue your matter.*"

THE RESPONDENT'S SUBMISSIONS

18. The Respondents said the Applicant's car had an excessively high mileage of 486 000, averaging about 54 000km per month.
19. The Respondent said the Volkswagen T5 Kombis are very problematic. Hence, no one else in their region wanted to work on this car.
20. The Respondent said, due to their experience with these cars, they knew that the first problem was likely to be the oil cooler; and that they found that to be the case.
21. The Volkswagen T5 Kombi engine is mounted in the nose; hence you need to take the engine out first before diagnosing oil cooler problems.
22. The car had not been correctly and adequately serviced by previous service providers, hence many consequential mechanical and electrical problems.
23. When the Applicant brought the car in for the first time, the Applicant was told what the problems were and was given the quote, which she expressly accepted.
24. The Respondent asserted that they properly repaired the car and even test drove it before handing it over to her.
25. The car was back the following week with the same problems; it was at this, they decided to make crucial decisions:
 - 25.1 They decided that the engine had to be taken out;
 - 25.2 Taking out the engine meant the whole nose had to be removed;
 - 25.3 They discovered that the shaft on the water pump was faulty; this could only have been seen with the engine taken out;
 - 25.4 They concluded that the water shaft's damage was not due to a misdiagnosis or poor workmanship but due to wear and tear over nine years and 486 000km. This damaged shaft on the water pump had to be replaced;

- 25.5 They say they sent an estimation for the repairs to the Applicant, who acknowledged not receipt of this estimation;
- 25.6 The Applicant also bought some parts on her own; and
- 25.7 It can be implied from the Respondent's submissions that the Applicant did not send any express authorization for the car to be stripped or repaired when it was back there.

ISSUES TO BE DECIDED

- 26. The Tribunal has to decide whether there was any pre-authorization given by the Applicant for the car to be stripped and repaired:
 - 26.1 The Applicant says she did not authorize the car's stripping and repair the second time it was back with the Respondent; and
 - 26.2 The Respondent is effectively saying there was some tacit or implied authorization by the Applicant.

CONSIDERATION OF MERITS

- 27. The Respondent set a good precedent for their working relationship with the Applicant when the car was first brought in. He quoted her between R13 000 (thirteen thousand Rand) and R15 000 (fifteen thousand Rand), which the Applicant accepted before the Respondent could start working on the car.
- 28. The Respondent worked on the car and charged the Applicant R9830.79 (nine thousand eight hundred and thirty Rand and seventy-nine cents), which the Applicant paid when collecting the car on 2 February 2018.
- 29. When the car came back for further repairs, the Respondent made a conscious decision that they were going to take the engine out of the Applicant's car to access the water pump and other parts of the car. The Respondent did not immediately notify the Applicant of this.
- 30. The Respondent later sent the Applicant the quotation of R59 278.94 (fifty-nine thousand two hundred and seventy-eight rand and ninety-four cents), for which a deposit of R42 000 (forty-two thousand Rand) was required. The Applicant did acknowledge receiving this quotation without giving any authorization.

31. The Respondent says the Applicant started buying some parts on her own, which the Respondent implies was a tacit or implied authorization for them to continue with the repairs, as they had already stripped the car, out of necessity as they imply.

CONCLUSION

32. A careful reading of Section 15(3) makes it clear that the Respondent had to get the approval of the Applicant before stripping or diagnosing the car.
33. The Respondent did not get any express authorization from the Applicant to go ahead with these repairs.
34. Both MIOSA and the NCC concluded that the procedures and processes followed by the Respondent were reasonable under the circumstances.
35. Both MIOSA and the NCC concluded that the independent assessments demanded by the Applicant had to be at her own cost, as such is not covered under the Act.
36. Based on the provisions of the Act, which is also in line with some of the conclusions by both MIOSA and the NCC:
 - 36.1 The Tribunal agrees with the Applicant that the Respondent cannot charge the Applicant storage of R150 per day for the duration the car was parked at the Respondent's premises. The lengthy stay of the car was partly due to the actions of the Respondent when they stripped the car without the approval of the Applicant;
 - 36.2 We disagree with the Applicant in her demand that the car be taken to an independent assessor for an independent mechanic to repair the car; and
 - 36.3 The Act does not cater for consequential damages; hence the Tribunal cannot make an order forcing the Respondent to reimburse the Applicant for expenses incurred in hiring replacement cars during the time the Applicant's car has been parked at the Respondent's premises.

ORDER

37. Accordingly, for the reasons set out above, the Tribunal makes the following order:

- 37.1 The Respondent is ordered to re-assemble the Applicant's car to the condition it was in at the time the car was brought in for the second time;
- 37.2 The Respondent is permitted to remove whatever new parts it may have put in while repairing this car;
- 37.3 The Respondent is ordered to repair the damage caused to the Applicant's front door seal car when the car skidded inside the Respondent's premises, while in the care of the Respondent;
- 37.4 The Respondent is ordered not to charge the Applicant any storage fees for the duration the car was at the Respondent's premises, since the date it was brought in for the second time;
- 37.5 The Applicant is ordered to collect the car from the Respondent's premises within 30 days after the Respondent had appropriately re-assembled the car to the state it was in when the Applicant brought it in for the second time; and
- 37.6 No order is made as to costs.

DATED ON THIS 18th day of October 2020



Prof B Dumisa

Presiding Member

Ms. P Beck (Tribunal Member) and Mr. A Potwana (Tribunal Member) concurring