

**IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION**

Case number: **NCT/257336/2023/75(1)(b)**

In the matter between:

BONAKELE HENDRIK LEPHOTO

APPLICANT

And

FRANKLE MOTORS CC T/A SWAN MOTORS

RESPONDENT

Coram:

Dr MC Peenze - Presiding Tribunal Member

Mr S Hockey - Tribunal Member

Dr A Potwana - Tribunal Member

Date of Hearing - 5 December 2023

Date of Judgment - 7 December 2023

JUDGMENT AND REASONS

APPLICANT

1. The applicant in this matter is Bonakele Hendrik Lephoto (the applicant). The applicant is a consumer, as defined in section 1 of the Consumer Protection Act 68 of 2008 (the CPA). At the hearing, the applicant was represented by Mr Mfundo Mbatha (Candidate Attorney) of De Wet Lyell Nell & Maeyane Attorneys.

RESPONDENT

2. The respondent is Frankle Motors CC t/a Swan Motors (the respondent). The respondent is a supplier, as defined in section 1 of the CPA. At the hearing, the respondent was represented by Advocate Graig Thomas under instruction from Keith Sutcliffe & Associates Inc.

TERMINOLOGY

3. A reference to a section in this judgment refers to a section of the CPA.

APPLICATION TYPE

4. This is an application in terms of section 75(1)(b). In this application, the applicant, with leave granted by the Tribunal, seeks redress against the respondent.
5. The applicant alleges a breach of the CPA because the respondent allegedly failed to comply with the applicant's request to repair his vehicle in accordance with section 56(2)(a).

BACKGROUND

6. The applicant bought a Hyundai vehicle on 28 April 2021 for R215 000 from the respondent. He experienced mechanical and structural defects and returned the vehicle the day after purchase for repairs. The supplier effected repairs as requested. Hereafter, the consumer returned the vehicle several times, followed by repairs by the supplier every time.
7. Eventually, the consumer decided that the defects were not satisfactorily repaired and referred the matter to the Motor Industry Ombudsman of South Africa (MIOSA). The respondent alleges that the consumer found different faults in the vehicle every time and that his driving on gravel roads aggravated the risk of suspension malfunction.
8. The MIOSA advised that the purchase be cancelled, and the consumer is refunded with a deduction for reasonable wear and tear after using the vehicle. The consumer initially accepted the settlement, with around R60 000 deduction for wear and tear, but later retracted the settlement following advice from his legal representatives.
9. At the hearing, the parties advised that settlement negotiations had been renewed. Forthwith, they wished to settle the matter contractually without making the settlement an order of the Tribunal. The Tribunal advised the applicant that such an arrangement can only occur if he removes the matter from the roll. The Tribunal further cautioned the applicant that the matter cannot be re-enrolled in such an instance. Alternatively, the parties were advised to postpone the matter to allow for settlement negotiations to be completed. The parties did not want to postpone the matter.

10. As the settlement details were not yet finalised, the Tribunal allowed the matter to be stood down, permitting the parties to finalise their negotiations. The Tribunal reconvened and was informed that the parties had signed a settlement agreement and that the applicant had withdrawn the matter. The applicant confirmed that he would send the signed Tribunal form, confirming the removal of the matter, before 13:00 on 5 December 2023.

CONCLUSION

11. The parties settled outside the Tribunal, and the applicant subsequently requested that the matter be removed from the Tribunal's hearing roll.

12. As the parties wish not to disclose the contents of the settlement agreement and further wish not to confirm the settlement agreement as a consent order, the Tribunal noted the withdrawal of the matter by the applicant. It made no finding on the merits of the application.

ORDER

13. Accordingly, the Tribunal makes the following order:

13.1 The matter is removed from the roll; and

13.2 There is no cost order.

DATED ON THIS 7TH DAY OF DECEMBER 2023.

(signed)

Dr MC Peenze

Presiding Tribunal Member

Tribunal Members Mr S Hockey and Dr A Potwana concur.

