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

Case number: **NCT/257816/2023/75(1)(b)**

In the matter between:

NAEEM CASSIM

APPLICANT

And

KEMPSTER SEDGWICK (PTY) LTD

FIRST RESPONDENT

CMH HOLDING (PTY) LTD

SECOND RESPONDENT

Coram:

Dr MC Peenze - Presiding Tribunal Member Dr A

Potwana - Tribunal Member

Mr S Hockey - Tribunal Member

Date of Hearing - 25 January 2023 Date

of Judgment - 29 January 2023

JUDGMENT AND REASONS

THE PARTIES AND REPRESENTATION

1. The applicant is Naeem Cassim (the applicant), a consumer as defined in section 1 of the Consumer Protection Act, 68 of 2008 (the CPA). At the hearing, the applicant represented himself.
2. The first respondent is Kempster Sedgwick (Pty) Ltd t/a CMH Multi-

Franchise Cape Town, a duly registered company under the laws of the Republic of South Africa with registration number 926/900691/07. The first respondent is a supplier, as defined in section 1 of the CPA, and traded as CMH Jaguar Land Rover Cape Town before.

3. The second respondent is CMH Holdings (Pty) Ltd, the holding company of Kempster Sedgwick (Pty) Ltd, duly registered under the laws of the Republic of South Africa, with registration number 2006/030764/07. The second respondent is a supplier, as defined in section 1 of the CPA
4. The first and second respondents will collectively be referred to as “the respondents”.
5. During the hearing, the respondents were represented by Mr Kelvin Moodie, an attorney of Pierce Du Toit & Moodie Attorneys.

TERMINOLOGY

6. A reference to a section in this judgment refers to a section of the CPA.
7. A reference to a rule refers to the “Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal”¹ (the rules).

TYPE OF APPLICATION

8. The applicant referred this matter to the National Consumer Tribunal (the Tribunal) in terms of section 75(1)(b). The applicant first referred his complaint to the National Consumer Commission (the NCC), who, after an assessment, concluded that the redress sought by the applicant could not be provided in terms of the CPA and that the NCC did not have jurisdiction to pursue a claim for compensation for damages as sought by the applicant from the respondent in terms of the CPA. The NCC accordingly issued a notice of non-referral on 14 December 2022.

¹ Published in GN 789 in GG 34405 of 29 June 2007.

9. In terms of sections 75(1)(b), if the NCC issued a notice of non-referral as it did in the present matter, the complainant may refer the matter directly to the Tribunal, with leave of the Tribunal. The Tribunal granted such leave on 18 October 2023.

BACKGROUND

10. The applicant purchased a Jaguar E Pace motor vehicle from the first respondent in June 2020. According to the applicant, he first contacted the first respondent on 5 June 2020. On the same day, a representative of the first respondent sent him the specifications of the vehicle that was available for purchase. An agreement was reached on 9 June 2020 for the purchase and sale of the vehicle. On the same day, the first respondent sent an offer to purchase (OTP) before the applicant applied for the financing of the vehicle by Nedbank Limited, trading as MFC (MFC).
11. The applicant alleges that the vehicle was sold to him as a 2020 model, whereas the respondents were aware that the vehicle was a 2019 model. He alleges that the Instalment Sale Agreement with MFC indicates that the vehicle is a 2020 model and that he only discovered it to be a 2019 model when he tried to sell it in October 2022.
12. The relief sought by the applicant is that the first respondent settles the full outstanding balance he owes to MFC in the amount of R789,532.00²
13. Documentation provided by both parties indicates that the vehicle was

² See page 14 of the Tribunal bundle

manufactured in 2018 and delivered to the first respondent in 2019.

14. The OTP reflected an odometer reading of 1500 km at the date of sale. According to the applicant, based on the odometer reading, it is reasonable to believe that the first respondent used the vehicle without registering it on the NATIS system before it was sold to him.

15. The respondents allege that the applicant knew the vehicle was second-hand and submit that they never misrepresented it as new. The first respondent obtained the vehicle in August 2019 to sell it to a customer who subsequently decided not to proceed with the purchase. In February 2020, the first respondent's workshop courtesy vehicle was sold, and it was decided to use it as the replacement workshop courtesy vehicle.

16. The dispute is whether the vehicle was represented to the applicant as a 2020 or 2019 model. It is common cause that the model year of the vehicle is 2019, but whether this was communicated to the applicant is disputed.

THE RELEVANT LEGAL PROVISIONS

17. Concerning the marketing of any goods, section 41 outlines that the supplier must not express or imply a false, misleading, or deceptive representation concerning a material fact to a consumer. A supplier must also not use exaggeration, innuendo, or ambiguity as to a material fact or fail to disclose a material fact if that failure amounts to deception.

EVALUATION

18. The applicant alleges a misrepresentation of the vehicle as a 2020 model instead of a 2019 model.

19. The Tribunal has considered whether the respondent's conduct constituted prohibited conduct³ in terms of the CPA. In doing so, the Tribunal is mindful of its wide-ranging powers to make appropriate orders in relation to prohibited conduct.⁴

20. According to the evidence before the Tribunal, the first respondent provided the applicant with the vehicle's specifications on 5 June 2020. The applicant does not dispute receiving the specifications or the contents thereof. According to these specifications, the vehicle was presented as a 2019 model. Full particulars regarding the make and model were communicated. This document also confirmed that the vehicle was manufactured on 5 December 2018, and that the dealer accepted delivery on 17 September 2019.⁵ During the hearing, the applicant submitted that he did not thoroughly read the specifications, as his intention for requesting such specifications was mainly to determine whether it was an SUV.

21. In the offer to purchase, signed on 9 June 2020, the vehicle is represented as goods first registered on the e-Natis system on 24 February 2020.⁶ During the hearing, the applicant outlined that the "date of first registration" should have been 2019. However, the Tribunal finds that it would have been a misrepresentation if the date of first registration had been recorded as 2019, as it was not previously registered. The date of first registration should not be confused with the model date of the vehicle.

³ Prohibited conduct is defined in section 1 as meaning an act or omission in contravention of the Act.

⁴ See *National Credit Regulator v Dacqup Finances CC trading as ABC Financial Services – Pinetown and Another* (382/2021) [2022] ZACSA 104 (24 June 2022).

⁵ See pages 17 and 133 of the Tribunal bundle.

⁶ See page 136 of the Tribunal bundle.

22. According to the evidence, the vehicle's model, as recorded in the offer to purchase, is the same as the vehicle whose specifications were sent to the applicant on 5 June 2020. Further, the offer to purchase confirms the vehicle's mileage as 1500 km, indicative of former usage of the vehicle.

23. In the Instalment Sale Agreement between MFC and the applicant, the vehicle is incorrectly reflected as a 2020 model. However, the respondents are not party to this agreement, and the applicant failed to prove that the mistake on the Instalment Sale Agreement resulted from a representation by the respondents. The respondents provided MFC with the correct documents, reflecting the date of first registration as 2020, the VIN, and the Model code (2[.]), which is translatable to a 2019 model. Further, on the invoice submitted by the first applicant to MFC and emailed to the applicant, the vehicle's status is confirmed as "second-hand goods".

24. Based on the evidence presented, the applicant received details of a second-hand vehicle and subsequently purchased such a vehicle. The applicant provided no evidence that he requested a new or 2020 model vehicle. The applicant conceded that he did not read all the documents pertaining to the vehicle's specifications and relied solely on the content of the Instalment Sale Agreement with MFC.

25. The Tribunal finds that the respondents did not misrepresent the vehicle at any point and cannot be held liable for any mistake in an instalment agreement to which they are not a party. The applicant was duly informed and should have been knowledgeable of the type and year model of the vehicle that he purchased. On the evidence before it, the Tribunal finds insufficient evidence that the first respondent misrepresented the vehicle's model year or misled the applicant regarding its second-hand status at the time of purchase. In the absence of evidence to support a claim of

misrepresentation or failure to disclose a material fact, the Tribunal finds that the respondents did not contravene section 41.

ORDER

26. In the result, the Tribunal makes the following order:

- 26.1. The application is dismissed; and
- 26.2. There is no cost order.

[signed]

Dr MC Peenze

Presiding Tribunal Member

Dr A Potwana and Mr S Hockey concur.