



LIMPOPO PROVINCE
LIMPOPO PROVINSIE
XIFUNDZANKULU XA LIMPOPO
PROFENSE YA LIMPOPO
VUNDU LA LIMPOPO
IPHROVINSI YELIMPOPO

**Provincial Gazette • Provinsiale Koerant • Gazete ya Xifundzankulu
Kuranta ya Profense • Gazethe ya Vundu**

(Registered as a newspaper) • (As 'n nuusblad geregistreer)

(Yi rhijistariwile tanihi Nyuziphepha)

(E ngwadisitšwe bjalo ka Kuranta)

(Yo redzhistariwa sa Nyusiphepha)

Vol. 22

Extraordinary

**Ku katsa na Tigazete to
Hlawuleka hinkwato**

14 APRIL 2015

14 APRIL 2015

14 DZIVAMISOKO 2015

14 APORELE 2015

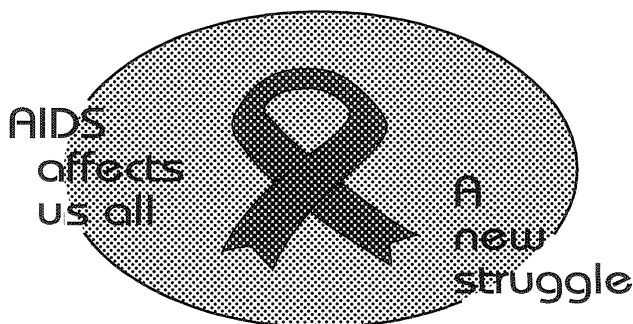
14 LAMBAMAI 2015

No. 2499

Buitengewoon

**Hu tshi katelwa na
Gazethe dza Nyingo**

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Prevention is the cure

**AIDS
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DEPARTMENT OF HEALTH

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GENERAL NOTICES

GENERAL NOTICE 117 OF 2015

DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT & TOURISM

INVITATION FOR NOMINATION OF MEMBERS OF THE CONSUMER AFFAIRS COURT, LIMPOPO PROVINCE

I, SEAPARO SEKOATI, Member of the Executive Committee Council for Economic Development, Environment and Tourism hereby invite nominations for members of Limpopo Consumer Affairs Court in terms of section (14) 4 of the Consumer Affairs (Unfair Business Practices) Act,

Section 14 (4) provides that:

The responsible Member shall invite interested parties, by notice in the Provincial gazette and advertisement in the print media regarded as appropriate by the responsible Member, to nominate candidates, within 21 days of the publication of such notice, for consideration as members of the court.

Members of the public are therefore requested to forward nominations within 21 days of this

Mr. Kenneth Maboea

Department of Economic Development, Environment and Tourism

Private bag x 9484

Polokwane 0700

20 Hans Van Rensburg, Evridiki Towers, Polokwane 0700

The closing date will be the 14th May 2015

Enquiries can be made to Mr. Kenneth Maboea

Tel : 015 293 8535

Email : Maboea@ledet.gov.za

EVRIDIKI TOWERS, 20 HANS VAN RENSBURG STREET, POLOKWANE 0700

NB: PLEASE NOTE THAT CV INCLUDING COPIES OF CERTIFICATE AND PROVE OF RESIDENCE MUST BE ATTACHED AND WILL BE REQUIRED TO COMPLETE A FINANCIAL DISCLOSURE. SECURITY CLEARANCE IS REQUIRED

GENERAL NOTICE 118 OF 2015

DEPARTMENT OF
ECONOMIC DEVELOPMENT, ENVIRONMENT & TOURISM

CASE NO: LCC50/12/12

In the matter between:

MICHAEL MMAPITSI MATIMA:

COMPLAINANT

And

BB AUTO USED CARS (PTY) LTD

RESPONDENT

JUDGEMENT

CORAM:PATRICK NTAKUSENI ACE VELE NDOU (CHAIRPERSON)S H LETSOALODEPUTY CHAIRPERSONS C MALATJICOURT MEMBERM I MANGENAALTERNATE MEMBERL F MOJAPELOFOR THE APPLICANTBENNO DE KLERKFOR THE RESPONDENT

INTRODUCTION

The Applicant is an adult male person residing at **Ga-Ramokgopa** in Limpopo Province. The Respondent is a company duly registered in accordance with the company laws of the Republic of South Africa, with its place of business at **90 Landros Mare Street, Polokwane, Limpopo Province.**

BACKGROUND

The Respondent is a second hand car dealer. On the 24th of May 2012, the Applicant entered into negotiations for the purchase of a motor vehicle, to wit a **MERCEDEZ BENZ C200, KOMPRESSOR**, a 2005 model, with one **Dennis Legodi** who was acting within the course and scope of his employment as a duly authorized sales person for the Respondent.

On the 25th of May 2012, the Applicant effected a payment of R15 000 (fifteen thousand rand) which was intended as a deposit on the purchase price which had been agreed at R100.000 (one hundred thousand rand) On the same day the parties signed an offer to purchase which also included conditions of offer for used vehicles. On this offer to purchase some words were inserted by hand indicating that the Applicant accepted that the vehicle was being sold to him as is and that it had no warranty. The document further stated that the Respondent will not provide a licence and registration and that it had no guarantee.

On the 28th of May 2012, the Applicant effected a further payment of an amount of R85 000.00 (**eighty five thousand rand**) which went to clear the balance on the motor vehicle. On the same day the Applicant signed a delivery document in terms of which he acknowledged that the Respondent had advised him that he conducted a pre-delivery inspection of the motor vehicle and that it had not detected any material defect other than those that had been pointed out to him.

The following day i.e. the **29th of May 2012** the Applicant signed a document which was identified as the used vehicle Health statement, in terms of which the Respondent acknowledged that all their vehicles are 109 point inspected and reconditioned to manufacturer standards. The documents further indicated that all vehicles are in a "roadworthy condition" and were certified by a DEKRA Roadworthy Centre.

The long and short of it is that the above document confirms that the Respondent had followed process and had taken the vehicle through a roadworthy test. The fact of the matter as it appears later on, was that no such inspection had ever been conducted on this vehicle. The Respondent had not disclosed this fact but had instead misrepresented the true state of affairs. Acting on the above misrepresentation the Applicant took delivery of the vehicle on the same day that is the 29th of May 2012.

When he took delivery of the vehicle, the Applicant refused to buy a warranty as well as insurance through the Respondent. The following day on the 30th of May 2012, the Applicant noticed that there was an orange light which was flicking and indicating that the vehicle needed some attention.

The Applicant then telephoned the salesman, Mr Dennis Legodi and informed him about the light. He then later on proceeded to the Respondent's workshop and the Mechanic at the workshop looked at the vehicle and enquired if it was driving well and when Applicant confirmed that it was driving well the mechanic then informed him that as the workshop was fully booked on that day which was a Wednesday he could drive away with the vehicle and only take it back to him the following Saturday of the 2nd June 2012.

The Applicant , however did not show up on the 2nd June 2012 as had been arranged .On Sunday the 3RD May 2012 the Applicant telephoned the salesman, Mr Legodi and informed him that as he was driving that day the vehicle suddenly stopped and would not start again- the engine was dead. The salesman advised him to arrange for the vehicle to be towed to his home which he did. On Monday the 04th May 2012 the salesman made a report to the respondent's manager and upon inspection of the vehicle.it was found that indeed the vehicle's engine had ceased, oil was coming out even through the exhaust system.

There was a huge hole on the block of the engine and in fact, there was no engine. Although there was a problem between the Applicant and the Respondent as to who was responsible and subsequently liable for the cost of repairs, the Respondent ultimately agreed to tow the vehicle to the Mercedes Benz Service Centre where a full analysis was done on the vehicle.

Using their diagnosis assistance system Mercedes Benz found that indeed at the time when the engine stopped it had been moving at a speed of 181 Km per hour. A quotation for the repairs was estimated at R100.000.00. The Applicant has argued that the Respondent had sold him a dead thing and that they must either give him another vehicle or they must refund his purchase price of R100.000.00

On the other hand the Respondent feels that the Applicant is the one to blame since

- (i) he had been asked to take the vehicle to their workshop on the 2nd of June 2012 but he did not show up and continued to drive the vehicle despite him knowing that the engine management light was on.
- (ii) He had driven the vehicle recklessly at a speed of 181 KM per hour when he well knew that the engine management light was on

- (iii) He had lied to them that he never exceeded the speed of 140 kilometers per hour
- (iv) The damage was as a result of the Applicant's abuse of the vehicle.
- (v) The Respondent further relied on a hand written "voetstoets" clause which stated that there was no warranty or guarantee on the motor vehicle

ANALYSIS OF THE EVIDENCE ADDUCED AS WELL AS THE SUBMISSIONS

MADE

In terms of Section 48(1) © which deals with unfair, unreasonable or unjust contract term, a supplier must not require a consumer to

- (i) Waive any rights
- (ii) Assume any obligation

Mr Mojapelo acting on behalf of the Consumer Protector has argued that the transaction which the parties entered into fell within the ambit of the Consumer Protection Act 2008 and further relied on Section 49 as well as section 51(b), and 55 (2)(b) all of which deal with the question of an implied warranty.

Section 49 (1) reads as follows: any notice to a consumer or provision of a consumer agreement that purports to

- (a) Limit in any way the risk or liability of the supplier or any other person
- (b) Constitutes an assumption of risk or liability by the consumer

c) impose an obligation on the consumer to indemnify the supplier or any other person for any cause or

(d) be an acknowledgement of any fact by the consumer, Must be drawn to the attention of the consumer in a manner and forth that satisfies the formal requirements of subsection (3) to (5)

(2) in addition to subsection (1) if a provision or notice concerns any activity or facility that is subject to any risk -

(a) of an unusual character or risk

(b) the presence of which the consumer could reasonably be expected to be aware or notice, or which an ordinarily alert consumer could not reasonably be expected to notice or contemplate in the circumstances or that

c) could result in serious injury or death

The supplier must specifically draw the fact, nature and potential effect of that risk to the attention of the consumer in a manner or form that satisfies the requirements of subsection (3) to (5), and the consumer must have assented to that provision or notice by initialling the provision or otherwise acting in a manner consistent with the acknowledgement of the notice, awareness of the risk and acceptance of that provision.

(3) a provision, condition or notice contemplated in subsection (1) or (2) must be written in plain language as described in section 22.

(4) the fact, nature and effect of the provision or notice contemplated in subsection (1) must be drawn to the attention of the consumer - (a) in a conspicuous manner and form that is likely to attract the attention of an ordinarily alert consumer, having regard to the circumstances and

(b) before the earlier of the time at which the consumer

(i) enters into a transaction or agreement, begins to engage in the activity or enters or gains access to the facility or

(ii) is required or expected to offer consideration for the transaction or agreement.

(5) the consumer must be given an adequate opportunity in the circumstances to receive and comprehend the provision or notice as contemplated in subsection (1)

Section 51 (b) reads as follows:

A consumer must not make a transaction or agreement subject to any term or condition if

- (b) (1) it directly or indirectly purports to waive or deprive the consumer of a right in terms of this Act
- (II) avoid a supplier's obligation or duty in terms of this Act
- (iii) set aside or override the effect of any provision of this Act or
- (iv) Authorise the supplier to -
 - (aa) do anything that is unlawful
 - (bb) fail to do anything that is required in terms of this Act.

Section 55(b) reads as follows:

Every consumer has a right to receive goods which are of good quality, in good working order and free of any defects.

Section 56 (2) (b) reads as follows:

Within six months after the delivery of the goods to a consumer, the consumer may return the goods to the supplier, without any penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55 and the supplier must at the direction of the consumer either-

- (a) Repair or replace the failed, unsafe or defective goods
- or
- (b) Refund to the consumer the price by the consumer for the goods.

The long and short of the above submission is that it need not be overemphasised that the Consumer Protection Act was enacted to protect consumers from unconscionable, unjust or improper practices. The Act creates an implied warranty of the quality on the goods or services supplied. As a result of this implied warranty, the consumer has the right to receive goods which are of good quality, in good working condition and free of all defects.

The long and short of it is that this is a contract which was based on a foundation of lies as the documents which were finally handed over to the complainant deliberately stated facts which were full of untruths for example

1. The contract stated that a pre-delivery inspection would be done but this did not happen
2. The contract tried to hide behind a voetstoets clause
3. The Respondent tried to blame the complainant for driving at a high speed, which fact is neither here nor there
4. He was made to sign a document which was to the effect that he acknowledged that the Respondent had advised that they conducted a pre-delivery inspection of the motor vehicle and that it had not detected any material defects other than those pointed out to him that day.

5. He was further made to sign a confirming affidavit that he the complainant had also inspected the vehicle and found it to be in an acceptable condition.

6. The contract further stated that the vehicle's health had been conducted when in fact it never happened.

To add salt to injury when it appears even to the eyes of a lay person that there was clearly a problem with the vehicle as it reported through its management system both the salesman as well as the company mechanic advised and encouraged the complainant to continue to drive the vehicle for a further three days.

It would have been prudent if the two had advised complainant to leave the vehicle with them until such time as they would have attended to it but this wisdom eluded them completely.

The argument that the complainant failed to take the car in the following Saturday but only telephoned when the car had stopped the following day, cannot carry the matter much further.

The fact of the matter is that the complainant was handed over the vehicle when the Respondent had not ensured that it was of a good quality and condition.

The complainant was offered a warranty which is sold as a financial product. He declined the warranty and was made to acknowledge same. The warranty offering had no bearing as the Act requires the Respondent as the supplier to ensure that they comply with the standards and requirements which are that

- (a) The goods are of good quality , in good working order and condition
- (b) The goods will be usable and durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply.
- (c) Subsection (5) provides that in order to determine whether the goods meet the requirements mentioned above it is irrelevant whether a product failure or defect whether latent or patent or whether it could have been detected by a consumer before taking delivery of the goods.

In order for the Respondent to avoid the provision of Section 55 (2) (a) and (b) it should prove that the complainant has been expressly informed that the goods are offered in a specific condition and that the Consumer has expressly agreed to accept them in that condition or knowingly acted in a manner consistent with accepting the goods in that condition.

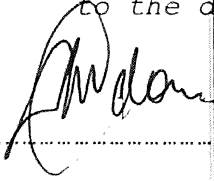
Considering the totality of the evidence and the facts presented, the Respondent has failed to discharge the onus. The documents on pages 30 and 31 of the bundle prove conclusively that Mr Legodi made the complainant to sign the documents which contained factual inaccuracies when he knew them to be incorrect. Accordingly the complainant could not have expressly agreed to accept delivery of the vehicle in condition it was in when same was not disclosed to him.

In the premises the complainant's claim succeeds and we make the following order.

- (I) The agreement of sale entered into between the parties on the 28th of May 2012 is hereby cancelled.
- (ii) The Applicant is ordered to return the vehicle to the Respondent and it is confirmed that that the Respondent is already in possession of the vehicle.
- (iii) The Respondent is ordered to refund the sum of R100.000.00 (one hundred thousand rand) to the Applicant within 14 days from the date of this order failing which a warrant of execution shall be issued for the recovery thereof.
- (iv) The Respondent is ordered to pay to the Applicant interest on the amount of R100.000.00 at the rate of

15.5 % per annum with effect from the 29th of May 2012

to the date of final payment thereof



THE CHAIRPERSON

LIMPOPO CONSUMER AFFAIRS COURT

DATE: 27/06/2013
