



THE PROVINCE OF MPUMALANGA
DIE PROVINSIE MPUMALANGA

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No. 2443

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AIDS
affects
us all



A
new
struggle

Prevention is the cure

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DEPARTMENT OF HEALTH

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GENERAL NOTICE

NOTICE 132 OF 2015

IN THE CONSUMER AFFAIRS COURT FOR THE MPUMALANGA PROVINCE HELD AT BETHAL

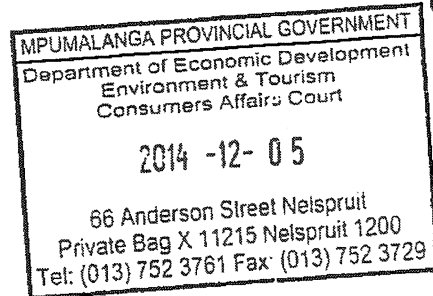
Case No:MPCC74/30/07/13

In the matter between

MABUZA ELVIS JOSEPH

and

JAGUAR LANDROVER N4 WITBANK



COMPLAINANT

RESPONDENT

**Coram: SHABANGU NR(CHAIR); MSIBI VZ; LEBASA S; and MATSEBULA JM
(MEMBERS OF THE COURT)**

JUDGMENT

1. The Complainant is **JOSEPH ELVIS MABUZA**, an adult male person residing at Stand Number 4 Tangelo Street, West Acres, Nelspruit Mpumalanga Province. He is a consumer as defined in terms of section 1 of the Consumer Protection Act 68 of 2008.
2. The Defendant is **JAGUAR LANDROVER N4 WITBANK** a Propriety Limited company with registration number 2006/011141/07 duly incorporated and registered in South Africa. The business premises of the Respondent is situated at Stand Number 15 Langa Crescent, Corridor Hill, Witbank, Mpumalanga Province.
3. The Respondent carries on business in the Mpumalanga Province and hence falls within the jurisdictional authority of the Mpumalanga Consumer Affairs Court.
4. The applicant appeared in person and assisted by the Consumer Protector, Mr Nation Nkosi. The Respondent was represented by Mr Graham Jonathan Sacco duly authorised by the Company. Both parties testified and no witnesses called for either party.


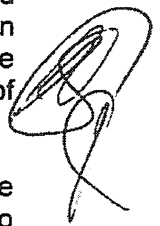
THE COMPLAINANT'S CLAIM

5. The Complainant claim, that the Defendant engaged in an unfair business practice in that respondent failed, refused or neglected to refund to the complainant an amount of R10 000(TEN THOUSAND RAND) plus interest in the amount of R2454-00(TWO THOUSAND FOUR HUNDRED AND FIFTY FOUR RAND), paid to the Defendant as deposit of a Freelander vehicle.
6. Defendant denies the allegations against the company and state that the deposit paid by the Complaint was non-refundable in terms of the company business practices.

THE ISSUES

7. The court has to decide whether the Defendant committed unfair business practice in refusing to refund the deposit paid by the complainant to the company.

COMPLAINANT'S VERSION

- 8.1 The Complainant approached the Defendant and enquired about buying a 2,2 litre Freelander Petrol HSE. He was attended by Mr Warren Knoop who was a salesman of the defendant at the point in time. The Complainant requested Mr Warren Knoop to send him a quotation of a 2.2 petrol Freelander. Warren sent a quotation of a 2,0 turbo silver in colour. The Defendant did not have the required ^{silver} white vehicle in stock. There was then exchange of correspondence between the parties. 
- 8.2 On 21 February 2013 a quotation valid for seven days was given to the Complainant by the Defendant for a Silver Land Rover Freelander 2.0 turbo petrol HSE for the purchase price of R554 980. The Complainant was requested by Mr Warren Knoop to deposit an amount of R10 000-00(TEN THOUSAND RAND) to the said vehicle in order for the company to order the vehicle. On 27 February 2013 the Complainant did deposit the said amount to the Defendant's account. 
- 8.3 Defendant failed to supply the silver Landrover Freelander 2.0 Turbo petrol because there was only a white Land Rover Freelander in stock. On 7 March the Defendant issued another quotation valid until 12 March 2013 with the total purchase price of R606 655-58 which amount was now different to the initial quotation of R554 908-00. The Defendant informed the Complainant that they had only a white Landrover Freelander in stock. Complainant was not able to buy the vehicle because of the change in price and also because he did not like the white colour. As a result Complainant was dissatisfied and decided to cancel the deal and claim refund.
- 8.4 Complainant was told by Mr Warren Knoop that the amount of R10 000-00 would be paid back to the complainant and he apologised for failure to supply the required vehicle to the Complainant.

DEFENDANT'S VERSION

8.5 Defendant version as stated by Mr Graham Jonathan Sacco is as follows:

- 8.5.1 It is the business normal practice to require holding deposit from clients in order to obtain vehicle from other dealers.
- 8.5.2 If a customer pulls out from the deal before 4 months, the customer forfeits the deposit.
- 8.5.3 The defendant managed to source the required vehicle model after Complainant had already pulled out from the deal. Defendant incurred some cost in sourcing the vehicle.
- 8.5.4 The complainant was verbally informed by Mr Sacco that the company will not refund the amount of R10 000-00 plus interest.

THE LAW ON THE MATTER

9. It transpired during evidence in chief by both the Respondent and the Complainant that the R10 000-00 was paid to enable the Respondent to order the silver Land Rover Freelander Diesel from the other dealers as the Respondent did not have the choice of the motor vehicle that the complainant wanted.

Section 17(2) of the Consumer Protection Act No. 68 of 2008 provide that:

“subject to subsection (3) and (4), a consumer has the right to cancel any advance booking , reservation or order for any goods or services to be supplied”.

Sub-section (3) provides that:

“A supplier who makes a commitment or accepts a reservation to supply goods or services on a later date may-

- (a) require payment of a reasonable deposit in advance; and
- (b) impose a reasonable charge for cancellation of the order or reservation, subject to subsection 5.

Sub-section 4 provides that:

For the purposes of this section a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to-

- (a) *the nature of the goods or services that were reserved or booked;*
- (b) *the length of notice of cancellation provided by the consumer;*

Section 16(4) provides that:

A supplier must:-

- (a) *return any payment received from the consumer in terms of the transaction within 15 business days after-*
- (i) *receiving notice of the rescission, if no goods had been delivered to the consumer in terms of the transaction; or*
 - (ii) *receiving from the consumer any goods supplied in terms of the transaction; or*
 - (iii) *receiving from the consumer any goods supplied in terms of the transaction.*

PRAYERS OF THE PARTIES

- (1) Cancellation of the agreement
- (2) Refund of R10 000-00 plus interest at 15,5% per annum from April 2013.

FINDINGS

- It is common cause that no goods had been delivered to the consumer.
- That the Complainant paid R10 000-00 as a reservation, booking or order.
- That the Respondent failed to deliver the type and description contemplated in the agreement ;and
- a notice of rescission was made within a reasonable time, that is, less than 15 working days.

VERDICT

In the light of the above facts and because of the analysis of the facts, arguments and reference to the applicable law, cited above, the verdict of this court is that the Respondent committed unfair business practices as outlined in the various legislature provisions discussed above.

ORDER

1. The agreement is hereby cancelled.
2. The Respondent is ordered to pay the complainant a refund in the amount of R10 000-00 plus interest at 15,5% per annum calculated from April 2013 to date of payment.



SHABANGU NR
CHAIRPERSON



MATSEBULA JM
ALTERNATE CHAIRPERSON



MSIBI VZ
COURT MEMBER



LEBASA S
COURT MEMBER

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