

# Defective motor vehicle and the Consumer Protection Act

*Motus Corporation (Pty) Ltd and Another v Wentzel* (1272/2019) [2021] ZASCA 40 (13 April 2021)

The Supreme Court of Appeal upheld an appeal brought by Motus Corporation (Pty) Limited t/a Zambezi Multi Franchise (Renault) SA, against Ms Abigail Wentzel (Ms Wentzel), the Respondent.

The issue for consideration by the Court was whether Ms Wentzel had made out a case, in terms of section 56(2) and (3) of the Consumer Protection Act 68 of 2008 (the Act), for the refund of the purchase consideration paid to Renault in respect of a Renault Kwid motor vehicle she bought. The related issues were whether the vehicle had defects and whether such defects were resolved by Renault.

On 16 May 2018, Ms Wentzel brought an application in the High Court against Renault, the First Appellant, and its parent company, Renault South Africa (Pty) Ltd (Renault SA), the Second Appellant. She claimed to be entitled to cancel a credit agreement between herself and Renault in respect of the vehicle, and to be refunded for the purchase price in the amount of R256 965.84. She tendered the return of the vehicle against the refund of the purchase price. Ms Wentzel had obtained finance for the vehicle from the Motor Finance Corporation (Pty) Ltd t/a M.F.C. (MFC), a division of Nedbank, and the latter had settled her indebtedness to Renault.

The essential basis for Ms Wentzel's claim was that Renault had, in breach of sections 49(1)(b), 55(2)(b) and (c), 56(2)(a) and (b) and 56(3) of the Act, sold her a brand-new vehicle which was woefully defective. Renault denied the alleged breaches of the Act and that Ms Wentzel was entitled to the relief that she sought.

The Supreme Court of Appeal noted that it was not necessary to address the scope of section 69(d) of the Act, particularly, the issues regarding whether a consumer ought to exhaust the alternative dispute resolution mechanisms provided for in the Act, and whether section 69 creates a hierarchy of remedies. Notwithstanding this, the Court stated that the primary guide in interpreting the section would be section 34 of the Constitution and the guarantee of the right of

access to courts. Thus, section 69(d) should not lightly be read as excluding the right of consumers to approach the Court to obtain redress.

Substantively, the Court held that Ms Wentzel failed to show that the requirements of section 56(3) were satisfied and that she was entitled to a refund of the purchase price of the vehicle. This was on the basis that Ms Wentzel's claim depended on the determination of issues, in respect of which there existed serious disputes of fact, and those factual disputes ought to have been resolved by applying the *Plascon-Evans* Rule. To the extent that there was a dispute regarding the nature of the defects in the vehicle and whether they were resolved by Renault, such dispute ought to have been resolved in favour of Renault. On Renault's version, which was accepted, all repairs were properly carried out.

Furthermore, the Court found that even if Ms Wentzel had brought herself within the provisions of section 56(3), she was not entitled to a refund of the amount stipulated in the order of the High Court, R256 965.84. This was not the amount she had paid to Renault. It was the amount she had agreed to pay to MFC in terms of the agreement with them. Her claim for the refund, if it had been successful, was not against the financier but against the supplier of the vehicle.

The Court found further that, assuming Ms Wentzel had made out a case for the refund, the use of the vehicle during the time it was in her possession was a relevant factor in determining the amount to be refunded, in terms of section 20 and for which Renault would have been entitled to deduct a reasonable amount.

Should there be any doubt whether or not a party to an agreement would be able to cancel an agreement and/or claim damages, we strongly suggest obtaining legal advice before concluding such an agreement.

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