

REGULATORY

Pre-owned purchases and the Consumer Protection Act

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and Sabine Letellier, Candidate Attorney

Purchasing a pre-owned vehicle may deprive a consumer of that new car smell, but it should never deprive a consumer of its rights in terms of the Consumer Protection Act 68 of 2008 (“CPA”).

The recent decisions handed down by the National Consumer Tribunal (“**Tribunal**”) in the matters of *Mpho William Masilo & Another* (the “**Masilos**”) *v* *Mystic Cars (Pty) Ltd* (“**Mystic Cars**”) and *Lucas Nare Ramangwa* (“**Ramangwa**”) *vs* *Pro-Quick (Pty) Ltd* (“**Pro-Quick**”) & *Another* showcase some of the rights which consumers need to be aware of when contemplating a purchase of a pre-owned vehicle.

In the matter of the *Masilos v Mystic Cars*, the Tribunal was tasked with deciding whether the Masilos had proved, on a balance of probabilities, that Mystic Cars had contravened certain sections of the CPA.

Just four months after having acquired the vehicle, the Masilos began experiencing mechanical issues with the vehicle which resulted in a breakdown. An assessment of the vehicle by an authorised retail motor industry workshop revealed that the vehicle required repairs amounting to just under R50 000.

The quotation detailing the cost of the repair was provided to Mystic Cars, however, Mystic Cars declined to pay for the repairs of the motor vehicle, albeit that they were willing to contribute R10 000 towards the repair as a “goodwill gesture”.

The Masilos, in turn, were of the view that the vehicle, when sold to them, was not of a standard of good quality as was expected by them and furthermore “*was not reasonably suitable for the purposes for which it is generally intended*” as is required under the CPA.

In making its decision, the Tribunal referred to various sections of the CPA. The first section considered was section 55 thereof which, in short, demands that consumers be provided with goods that are reasonably suitable for the purpose for which they are generally intended and are of a good quality, in good working order and free of any defects.

Section 56 of the CPA, in turn, affords consumers an implied warranty of quality in terms whereof a consumer is automatically provided with a warranty that goods comply with the standards set out in section 55 of the CPA.

In the event that the goods fail to meet this standard, the goods may be returned within 6 months of their delivery and the supplier is obligated to, at the choice of the consumer, either repair or replace the inadequate goods, or refund the consumer in full.

This section goes on to further provide that in the event a consumer elects to exercise its right to have the goods repaired, should any defect then occur within three months thereof the supplier is obligated to replace the goods.

The Tribunal found that sections 55 and 56 of the CPA were applicable to the matter at hand, that Mystic Cars was in contravention thereof and that the Masilos were therefore entitled to a refund of the purchase price paid by them.

In the matter of *Ramangwa v Pro-Quick & Another*, Ramangwa alleged, *inter alia*, that Pro-Quick had sold him a vehicle which had been involved in a major collision but without informing him of this pertinent fact.

Within two months of having purchased the vehicle, Ramangwa experienced problems with the vehicle and took the vehicle back to Pro-Quick for purposes of repair.

Despite the vehicle being repaired, the problems persisted and as a consequence, Ramangwa took the motor vehicle to a further centre for repairs and then requested a refund of the costs of the repair from Pro-Quick. Pro-Quick, in turn, refused to refund the costs of the repairs whatsoever.

In making its submissions to the Tribunal, Ramangwa submitted that the vehicle had been sold to him by Pro-Quick whilst Pro-Quick was aware thereof that the vehicle had previously been involved in a collision but failed to disclose this information to Ramangwa at the time of the acquisition of the vehicle.

In turn, Ramangwa presented the Tribunal with evidence indicating that the vehicle had suffered damage in the accident and had been inadequately repaired.

Due to the allegedly undisclosed damage, Ramangwa submitted that the value of the vehicle had drastically diminished.

In addition to considering the provisions of section 55 of the CPA, the Tribunal also considered section 25(1) thereof in terms of which a person who supplies goods that have been "*reconditioned, rebuilt or remade*" must apply a conspicuous notice, to the goods, stating that the goods have been reconditioned, rebuilt or remade, as the case may be.

Moreover, in terms of section 41, a supplier may not, *inter alia*, misrepresent a material fact to a consumer when marketing goods and it is a misrepresentation if a supplier omits "*to correct an apparent misapprehension*" of the consumer relating to a particular standard, quality, grade, style or model or that they are new, unused, reconditioned or reclaimed when they are not.

The Tribunal found that Pro-Quick had contravened the above sections of the CPA and as a consequence, Ramangwa was found to have been financially prejudiced.

Consumers must accordingly take note that, in accordance with the provisions of the CPA, when purchasing, *inter alia*, a pre-owned vehicle, they are provided with specific rights in relation to the vehicle being purchased.

These rights include, as stated above, the right to receive a vehicle of good quality, in working order, free of any defects and to be clearly informed should the vehicle be rebuilt or reconditioned in any manner or form whatsoever.

Werksmans offers assistance and advice to consumers in relation to the application of the CPA as well as its interpretation. Should you require further information, please contact us.



Tracy-Lee Janse van Rensburg

Director

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