

## IN THE NATIONAL CONSUMER TRIBUNAL HELD IN CENTURION

Case Number: NCT/133283/2019/75(1)(b)

In the matter between:

**SLEPICA, TANYA LOUISA**

**APPLICANT**

**And**

**SANDTON AUTOBODY, DAYTONA  
GROUP (PTY) LTD**

*(Registration number M2006024981)*

**RESPONDENT**

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*Coram:*

Adv FK Manamela - Presiding Member

Ms H Alwar - Tribunal Member

Prof K Moodaliyar - Tribunal Member

*Date of Hearing* - *21 June 2021*

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### JUDGMENT AND REASONS

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#### APPLICANT

- 1 The Applicant is Tanya Louisa Slepica, a major female residing in Parkview, Johannesburg, (*“the Applicant” or “Ms Slepica”*). The Applicant represented herself during the hearing of this matter.

## RESPONDENT

- 2 The Respondent in this matter submits that its proper company name is Daytona (Pty) Ltd, a business entity registered as such in terms of the company laws of the Republic of South Africa, under CIPC registration number M2005017155 (*"the Respondent" or "Daytona"*). In this application, the Respondent is cited by the Applicant as "Daytona Group (Pty) Ltd trading as Sandton Autobody. For the purposes of this judgment, we will refer to the Respondent as "Daytona".
- 3 Daytona was represented by Adv Roxanne Adams.
- 4 Due to Covid-19 restrictions, the hearing was conducted via audio-visual transmission, the Microsoft Teams.

## APPLICATION TYPE, RELIEF SOUGHT AND JURISDICTION

- 5 The Applicant approached the Tribunal in terms of section 75(1)(b) of the CPA, for an order confirming the recommendation made by the Motor Industry Ombudsman of South Africa (MIOSA), that: *"the respondent should either make the necessary arrangements for the motor plan to remain active until the correct expiry date of the motor plan ( five years from the date of purchase), or if this is not possible, supply an extended motor plan at no cost to the complainant"*
- 6 The Tribunal has jurisdiction to hear this application in terms of section 27 of the National Credit Act 34 of 2005.

## **BRIEF BACKGROUND**

- 7 Ms Slepica alleged that she purchased a new BMW 1 series motor vehicle from a company called “Daytona Group (Pty) Ltd trading as Sandton Autobody” (“Sandton Autobody”), in April 2014. She was told the vehicle had a 5-year warranty. In July 2018 she was informed that the warranty would expire in November 2018.
- 8 She then discovered that the vehicle was “pre-reported”, this apparently means that the car was already reported as sold in November 2013. Therefore, the warranty on the vehicle already started in November 2013, before she purchased the vehicle.
- 9 Ms Slepica alleges that the warranty was misrepresented to her and she wants Sandton Autobody to honour the full warranty period until April 2019. She further wants the entire vehicle industry to be sanctioned for this apparently common practice.
- 10 On 26 October 2018 Ms Slepica lodged a complaint with the Motor Industry Ombudsman of South Africa (“MIOSA”). On 12 December 2018 MIOSA issued a recommendation that Sandton Autobody extends the motor plan for the full five-year period or supplies an extended motor plan. It appears Sandton Autobody did not respond to the recommendation.
- 11 Ms Slepica then lodged a complaint with the National Consumer Commission (“NCC”) on 11 January 2019. On 28 March 2019, the NCC issued a notice of non-referral. The notice stated that the complaint had prescribed.

12 On 28 May 2019 Ms Slepica lodged an application with the Tribunal for condonation of the late filing of the leave application, which was accordingly granted.

13 On 19 October 2019 the Tribunal granted the Applicant's leave application to refer the complaint directly to the Tribunal.

14 The matter was set down for hearing on numerous occasions after October 2019, up to the current hearing before this Tribunal.

15 Daytona's defence is that it never sold any vehicle to Ms Slepica in that:

- it is not the entity that contracted with the Applicant;
- the Applicant contracted with Hyde Part Auto which is a separate legal entity to Daytona;
- the Respondent cited in these proceedings does not exist; and
- Daytona further asserts that it attempted to trace the documents relating to the purchase of the said motor vehicle, but was unsuccessful.

16 Daytona asks the Tribunal to dismiss this application.

## **ISSUES TO BE DECIDED**

17 The issues to be decided by the Tribunal are two-fold:

- whether or not the Applicant is entitled to the relief sought ( that is: the Tribunal to uphold the "MIOSA ruling"); and
- whether or not the Tribunal must uphold the points *in limine* raised by the Respondent (Daytona).

## APPLICANT'S SUBMISSIONS

- 18 Ms Slepica submits that she purchased a new BMW 1 series motor vehicle from a company called "Daytona Group (Pty) Ltd trading as Sandton Autobody" ("Sandton Autobody"), in April 2014.
- 19 She was told by the dealership that the vehicle carried a 5-year warranty. In July 2018 she was informed that the warranty would expire in November 2018.
- 20 She then discovered that the vehicle was "*pre-reported*", apparently meaning that the car was already reported as sold in November 2013, four to five months before the purchase was done. According to her, the warranty on the vehicle had already started in November 2013, before she purchased the vehicle.
- 21 Ms Slepica alleges that the Respondent had misrepresented to her the warranty of the vehicle. She wants Sandton Autobody to honour the full warranty period until April 2019. She further wants the entire vehicle industry to be sanctioned for this apparently common practice.
- 22 On 26 October 2018 Ms Slepica lodged a complaint with the Motor Industry Ombudsman of South Africa ("MIOSA"). On 12 December 2018 MIOSA issued a recommendation that Sandton Autobody extends the motor plan for the full five-year period or supplies an extended motor plan. Sandton Autobody did not respond to the recommendation.
- 23 Ms Slepica approached the Tribunal for an order to "uphold the MIOSA ruling".

## DAYTONA'S SUBMISSIONS

### ***Points in limine (Preliminary issues the Tribunal is asked to consider before considering the merits of the Applicant's application)***

- 24 At the outset, Daytona raises a couple of preliminary technical legal issues, on the grounds of which it prays that the Tribunal must dismiss the Applicant's application, before even considering the substantive issues / the merits of this application.
- 25 Daytona further asserts that it cannot answer to the merits of this application, as it was not the contracting party; and did not sell the motor vehicle in question to the Applicant.
- 26 Daytona further submits that it does not have personal knowledge of the facts alleged in the Applicant's application, and that the Applicant needs to bring a joinder application to join the correct party to these proceedings.
- 27 Daytona asks the Applicant to withdraw this application against Daytona in order to avoid unnecessary costs.
- 28 In its answering affidavit deposed to by Justin Nichlas Divaris ("Divaris") the director of Daytona, the following pertinent submissions are also made:
  - 28.1 non-Joinder of the correct party: Daytona submits that the entity cited by the Applicant as Sandton Autobody, Daytona Croup (Pty) Ltd (registration number M200602498), does not exist. Daytona, according to the deponent is registered as Daytona Pty Ltd with CIPC registration number M2005017155, a motor vehicle dealership whose known brands are high-end sports and luxury vehicles of the likes of Aston Martin, Mc Laren, and Roll Royce, etc;

Further that Daytona does not sell BMW 1 series, the vehicle in dispute in these proceedings;

- 28.2 the Applicant's has also cited Sandton Auto Body, a business entity involved in the repairs and not sales of motor vehicles, which was once a part of Hyde Park Auto which has gone into liquidation in May 2020;
- 28.3 Daytona submits that the Applicant should have cited Hyde Park Auto (in liquidation) and its appointed liquidators, and contends that Sandton Auto Body (or Sandton Auto Body Repair Centre) and Daytona, should not have been cited in these proceedings;
- 28.4 Daytona and Hyde Park Auto are separate legal entities as evidenced from the CIPC documents bearing unique and separate registration numbers;
- 28.5 Daytona has not concluded an agreement with the Applicant for the sale of a motor vehicle, including the vehicle which is the subject of the dispute before this Tribunal;
- 28.6 the Applicant did not attach the purchase agreement and the warranty agreement (if any) upon which she relies for the relief she is seeking, a requirement when she first lodged the dispute with the National Consumer Commission (NCC). These documents are also lacking in the paginated bundle before this Tribunal;
- 28.7 the said documents could not be traced and were declared lost. Daytona does not have these documents in its possession as it never contracted with the Applicant. Daytona's attorneys have also

attempted to assist with the discovery of these documents without success;

- 28.8 Daytona submits, no order can be made against it as it did not sell to the Applicant the vehicle in question, nor did it contract with the Applicant in respect of the vehicle in question;
- 28.9 furthermore, and in respect of the prayers the Applicant seeks, Daytona submits that should the order be made against it, it will be impossible for Daytona to perform in that the party cited in the Applicant's papers is Sandton Auto and not Daytona (Pty) Ltd;
- 28.10 Daytona did not sell the vehicle or the motor plan to the Applicant and cannot make any plans regarding the extension of the motor plan as the MIOSA had recommended in determination of the complaint lodged by the Applicant. Daytona, according to the deponent, has no direct or substantial interest in the order the Tribunal is asked to make, as it is a completely separate juristic entity to Sandton Auto;
- 28.11 as it stands, the order, if it were to be made by this Tribunal, would be an empty order made against an entity or party which does not exist;
- 28.12 according to Daytona, the Applicant's claim is fatally defective as it has been brought against an entity which the Applicant did not contract with, and consequently leading to no claim between the Applicant and Daytona; and
- 28.13 Daytona asks the Tribunal to dismiss this application.



## **ANALYSIS OF THE EVIDENCE AND THE APPLICABLE LAW**

### **The Points in *limine* raised by Daytona**

- 29 In its answering affidavit, Daytona raised preliminary technical legal points. Daytona asks the Tribunal to dismiss the Applicant's application on the strength of those issues raised. The Tribunal is also asked to not even consider the merits of this application on the basis that the technical legal issues raised are founded on sufficient grounds to dismiss the applicant's case.
- 30 Daytona's argument is that the Applicant did not cite the correct party. Daytona submits that the entity cited by the Applicant as Sandton Autobody, Daytona Group (Pty) Ltd (registration number M200602498), does not exist. Daytona, is registered as Daytona (Pty) Ltd, with CIPC registration number M2005017155. Daytona submits that the Applicant needs to bring a joinder application to join the correct party to these proceedings.
- 31 Daytona submits that the Applicant should have cited Hyde Park Auto (in liquidation) and its appointed liquidators, and contends that Sandton Auto Body (or Sandton Auto Body Repair Centre) and Daytona, should not have been cited in these proceedings.
- 32 Daytona further asserts that it cannot answer to the merits of this application, as it does not have personal knowledge of the facts alleged in the Applicant's application.

33 Daytona also, has no direct or substantial interest in the order the Tribunal is asked to make, as it is a completely separate juristic entity to Sandton Auto.

34 The Tribunal wishes to draw the attention of the parties to Rule 16<sup>1</sup> which deals with Joinder or substitution of parties. This rule provides the following:

*“ (1) The Tribunal may of its own accord or on application by a party combine any number of persons, either jointly and severally, separately, or in the alternative, as parties in the same proceedings, if their rights to relief depend on the determination of substantially the same questions of law or fact ” (underlining for own emphasis only)*

35 The Tribunal did not receive any application by a party, to join or combine any number of persons in these proceedings. When the issue of non-joinder or misjoinder was raised by Daytona, it was clear that the Applicant, being a lay person, may not have anticipated this defence being launched by Daytona.

36 However, the Applicant had the opportunity when required to do so in terms of the Rules<sup>2</sup> of the Tribunal, to file a replying affidavit after Daytona

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<sup>1</sup> Regulations for Matters Relating to the Functions of the Tribunal and Rules for the Conduct of Matters Before the National Consumer Tribunal Published GN 789 in GG 30225 of 28 August 2007, [subrule (1) amended by GN R203 OF 13 March 2015]

<sup>2</sup> Rule 14 of the CPA states: “(1) the Applicant may within 10 business days of being served with an answering affidavit, lodge a replying affidavit to any issues raised in the answering affidavit, other than a point of law. (2) A replying affidavit must set out in numbered paragraphs- (a) an admission or denial of each new ground or material fact raised in the answering affidavit; and (b) the position of the applicant on any point of law raised in the answering affidavit.

(4) If the Applicant does not file a replying affidavit, the Applicant will be deemed to have denied each new issue raised in the answering affidavit and each allegation of fact relevant to each of those issues.

responded to the allegations levelled against it by the Applicant, but chose to not do so. Daytona raised new ground or material facts in the answering affidavit, that the incorrect party had been cited. At that stage of the pleadings (when parties exchanged correspondence before the hearing of the matter), these issues may have been cleared sufficiently to allow the Applicant to either amend its papers or join the correct party.

37 Daytona has always maintained, long before this matter was set down for hearing (even during the condonation hearings), that it was the wrong party dragged into these proceedings.

38 It is evident in the papers filed with the Tribunal, and as far back as when the matter was first referred to the Motor Industry Ombud of South Africa (MIOSA) that the party consistently cited by the Applicant is “*Sandton Auto and Sandton Auto BMW*”<sup>3</sup>; “*Sandton Auto BMW*”<sup>4</sup>; or “*Sandton Auto Body Repairs, Daytona Group CIPC # M2006024981*”. These are all separate legal entities not matching the description of Daytona (Pty) Ltd as an entity trading under CIPC registration number M2005017155.

39 Daytona denies that it sells BMW 1 series<sup>5</sup> and denies ever entering into a purchase agreement with the Applicant in which the vehicle in question was sold and / or supplied to the Applicant. There is also no evidence before the Tribunal, as proof of a sale agreement between the two parties.

40 In *Kransfontein Beleggings (Pty) Ltd v Corlink Twenty Five (Pty) Ltd and Others*<sup>6</sup>, the court stated that: “*the test whether there has been a non-*

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<sup>3</sup> Pages 14 and 15 of the paginated bundle

<sup>4</sup> Pages 18, 22 and 31 of the paginated bundle

<sup>5</sup> Daytona Pty Ltd with CIPC registration number M2005017155, is a motor vehicle dealership whose known brands are high-end sports and luxury vehicles of the likes of Aston Martin; McLaren; Roll Royce, etc.

<sup>6</sup> [2017] ZASCA 131

*joinder is whether a party has a direct and substantial interest in the subject matter of the litigation, which may prejudice the party that has not been joined*". Daytona contends that it has no direct or substantial interest in the order the Tribunal is asked to make, as it is a completely separate legal entity to Sandton Auto. In this matter, should the Tribunal make an order against Daytona, the latter would be prejudiced.

41 Coming to the issues the Tribunal is asked to determine, the following deserve consideration:

- **whether or not the Applicant is entitled to the relief sought: “ *that the Tribunal uphold the MIOSA ruling* ”<sup>7</sup>**

42 The Applicant seeks an order that the ruling of MIOSA be upheld. Whether or not this is a competent relief [or an order] to be made by the Tribunal, is an issue to be considered. The Tribunal is an independent body not bound by any “*rulings*”, determinations, or decisions of other administrative bodies except the decisions of superior courts. For all intents and purposes, the MIOSA is not competent to make rulings, but recommendations regarding the facilitation of the settlement of disputes between parties. The Tribunal cannot even endorse any such “*rulings*”, determinations or recommendations, if any.

43 The question arises whether or not the “ MIOSA ruling” (the correct word being, recommendation) is executable against the party who in terms of the law, must perform to satisfy the order.

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<sup>7</sup> Procedure for determination of a dispute in terms of the South Africa Automotive Industry Code and Alternative Dispute Resolution Scheme, clause 21.2.2 thereof, which provides “...attempt to facilitate a settlement between the parties and where possible, provide a recommendation with regard to such settlement”.

- 44 Daytona asserts that the Applicant's prayer must fail on two grounds.
- 45 First, the entity against whom the Applicant asks the Tribunal to make an order, does not exist. Second, Daytona denies that it had sold the vehicle to the Applicant and that no contractual relationship existed or exists between Daytona and the Applicant. Daytona further submits that should the order be made against it, it will be impossible for Daytona to perform because the party cited in the application is Sandton Auto and not Daytona (Pty) Ltd.
- 46 In her reply to the preliminary points raised by Daytona, the Applicant submitted that it was not clear if Daytona is the parent or holding company associated with Sandton Auto. The CIPC documents provide clarity in respect of how these entities have been incorporated and registered. The Applicant could not provide evidence of Daytona's involvement in the matter before this Tribunal.
- **whether or not the Tribunal must uphold the points *in limine* raised by the Respondent (Daytona)**
- 47 The Tribunal is satisfied, on the basis of the evidence before it, that the Applicant had purchased the motor vehicle from Hyde Park Auto trading as Sandton Auto BMW. Hyde Park Auto has since gone into liquidation in May 2020.
- 48 Daytona is a separate legal entity distinct from Sandton Autobody, Daytona Group (Pty) Ltd (registration number M200602498).
- 49 In these circumstances, and for these grounds, the points *in limine* raised by Daytona, must be upheld.

## CONCLUSION

50 It is clear from the evidence presented by both parties that there is a clear case of mis-joinder or non-joinder. The correct party, Hyde Park Auto (in liquidation) has not been cited. This entity is said to be non-existent. The Applicant could have pursued the liquidators of Hyde Park Auto for her relief. Daytona has in turn made out a case against the Applicant's claim and provided sufficient evidence to disprove the allegations levelled against it.

## ORDER

51 The Tribunal makes the following order:

51.1 the points *in limine* are upheld;

51.2 the application against Daytona is dismissed; and

51.3 there is no order made regarding costs.

**THUS DONE AND SIGNED ON THIS 20<sup>TH</sup> DAY OF JULY 2021**

[Signed]\_\_\_\_\_

**FK MANAMELA**

**TRIBUNAL MEMBER**

*Ms H Alwar (Tribunal Member) and Prof K Moodaliyar (Tribunal Member), concurred with this judgment*

Authorised for issue by The National Consumer Tribunal

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