



**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT**

Case No. 719/17

In the matter between:

**NHLANHLA DUBE**

**PLAINTIFF**

**AND**

**DESTINY MOTORS (Pty) Ltd**

**DEFENDANT**

**Neutral citation:** *Nhlanhla Dube vs Destiny Motors (Pty) Ltd* [719/17] [2020]

*SZHC 36 (12<sup>th</sup> March, 2020)*

**Coram:** FAKUDZE, J

**Heard:** 5<sup>th</sup> March, 2020

**Delivered:** 12<sup>th</sup> March, 2020

**Summary:** *Contract – Plaintiff claims for cancellation of contract - alleges that Defendant gave warranty that the motor vehicle sold to*

*Plaintiff was in good condition – Motor vehicle developed mechanical faults – Defendant files Notice to Defend, Plea and Discovery Affidavit – Defendant’s attorney withdraws services – Defendant does not appoint another attorney until period prescribed by Rules expires – Does not appear in court on trial date on two occasions – Matter remains undefended and order made in favour of plaintiff after same has proved claim – costs granted.*

## **JUDGMENT**

- [1] On or about 10<sup>th</sup> and 11<sup>th</sup> of February, 2017 and at Matsapha the plaintiff personally and the Defendant represented by one Zishan, entered into a partly verbal and partly written agreement of sale of a motor vehicle.
  
- [2] The value of the motor vehicle was Eighty Thousand Emalangeni (E80,000.00). The first payment of Seventy Thousand Emalangeni (E70,000.00) was effected on the 10<sup>th</sup> February, 2017 and the remaining payment of Ten Thousand Emalangeni (E10,000.00) was effected on the 11<sup>th</sup> February, 2020. The plaintiff took possession of the motor vehicle on that day.
  
- [3] The plaintiff alleges that during the partly oral and partly written agreement the defendant induced and coerced the plaintiff to agree thereto. The defendant fraudulently and maliciously (mis) represented to the plaintiff that

the motor vehicle was in good working condition and was fit for the purpose for which it was bought. When making this representation the Defendant knew it to be false which caused the plaintiff to enter into the agreement and pay the purchase price.

- [4] The representation was material and was made with the object of inducing the plaintiff to enter into a contract with the Defendant and the Defendant was aware of this falsity of the representation.
- [5] At the time of negotiations, the Defendant did not disclose that the motor vehicle had just been sent to a mechanic to attend to engine problems and other mechanical faults. These problems and faults rendered the motor vehicle unsuitable for the purpose for which it was purchased.
- [6] In the month of April 2017, the plaintiff gave notice of cancellation of the sale agreement and demanded compliance with the sale agreement from the Defendant, by way of delivery of a fully functional motor vehicle from the Defendant and the Defendant failed to make such delivery. Consequently, the plaintiff cancelled the agreement and demanded a refund of the purchase price.
- [7] The Defendant is therefore indebted to the plaintiff in the sum of Eighty Thousand Emalangi (E80,000.00) being a refund of the purchase price and damages suffered by the plaintiff as a result of the defendant's breach of the agreement.

[8] Despite demand, the Defendant neglects or refuses to pay the above amount to the plaintiff which amount is now due and payable to the plaintiff.

[9] The Plaintiff claims:-

- (a) Payment in the sum of Eighty Thousand Emalangeni (E80,000.00).
- (b) Interest at 9% per annum calculated from date of issue hereof to date of final payment.
- (c) Costs of suit.

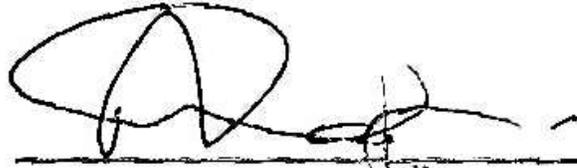
[10] The Defendant filed the Notice to Defend these proceedings. It further filed its Plea, Discovery Affidavit and attended the pre-trial conference. The matter was allocated a trial date which was 3<sup>rd</sup> and 4<sup>th</sup> March, 2020. The Defendant's attorney withdrew his services and filed a Notice of Withdrawal on the 7<sup>th</sup> February, 2020. The Defendant failed to appoint another attorney and when the matter came before court on the appointed date the Defendant's director was called three times and he did not respond. It was postponed to the next day and he did not show up. This is despite the fact the plaintiff's attorney informed the defendant that the matter would be before court on the appointed date. He did so in writing.

[11] On the 4<sup>th</sup> March, 2020, the matter was called again and the director was not present in court. It therefore remained an undefended matter and the plaintiff was given an opportunity to lead evidence.

[12] In light of all that has been said above, the following order is made:-

- (a) *The Defendant is ordered to pay the plaintiff the sum of Eighty Thousand Emalangeni (E80,000.00).*

- (b) *The Defendant shall pay interest at 9% per annum calculated from date of issue hereof to date of final judgment.*
- (c) *The Defendant is ordered to pay the costs of suit.*

A handwritten signature in black ink, appearing to be 'F. Fakudze', written over a horizontal line.

**FAKUDZE J.**

**JUDGE OF THE HIGH COURT**

PLAINTIFF: M.T.M. NDLOVU  
DEFENDANT: NO APPEARANCE