



SUPREME COURT OF APPEAL OF SOUTH AFRICA

ALETTA CATERIENA VAN NIEKERK vs FIRSTRAND BANK LIMITED

CASE NO: 065/2024

This matter was heard by the Supreme Court of Appeal (SCA). The case concerned whether Mrs Aletta Cateriena van Niekerk was entitled to cancel a credit agreement after discovering that the second-hand vehicle she had purchased had latent defects.

Background:

Mrs Van Niekerk purchased a 2012 Ford Ranger, and it was financed through a credit agreement with FirstRand Bank Limited. She paid a deposit and agreed to monthly instalments. Shortly after delivery, the vehicle developed serious mechanical problems, including defects to the gearbox and oil cooler.

The vehicle was returned to the dealership for repairs. However, further problems arose. An independent mechanic later confirmed that the gearbox installed in the vehicle was incorrect for that model and that the defects were latent (hidden and not discoverable upon reasonable inspection).

Mrs Van Niekerk cancelled the credit agreement and demanded a refund of her deposit and instalments. The bank refused to accept the cancellation and instituted legal proceedings against her. She defended the claim and filed a counterclaim seeking confirmation of cancellation and repayment of amounts paid.

The matter was first heard at the High Court which ruled in favour of the bank and found that:

Mrs Van Niekerk had waived her right to cancel the agreement by allowing the vehicle to be repaired. The Consumer Protection Act (CPA) did not apply because the transaction was governed by the National Credit Act (NCA). She should have first exhausted remedies under section 69 of the CPA before approaching the court. Therefore, her counterclaim was dismissed.

Mrs Van Niekerk appealed the judgment at the Supreme Court of Appeal and the appeal Court had to determine whether Mrs Van Niekerk had waived her common-law right to cancel the agreement; whether the CPA applied to the transaction and whether the consumer was required to exhaust section 69 remedies before filing her counterclaim.

Findings of the SCA

The SCA found in favour of Mrs Van Niekerk.

Firstly, the Court confirmed that the vehicle had latent defects that substantially impaired its usefulness. The evidence of the mechanic was uncontested. The Court held that she was entitled to rely on the common-law remedy of the actio redhibitoria (cancellation due to latent defects).

Secondly, the Court found that returning the vehicle for repairs did not amount to a waiver of her right to cancel. Waiver requires a clear intention to abandon a right, which was not proven.

Thirdly, the Court held that although the credit agreement itself was governed by the NCA, the vehicle (as goods) was not excluded from the application of the CPA. Therefore, the CPA could still apply to the quality of the goods sold.

The Court further found that the bank acted both as credit provider and supplier in terms of the credit agreement.

Finally, the SCA held that section 69 of the CPA did not bar her counterclaim. Since the bank chose to litigate in the High Court, she was entitled to defend herself and institute a counterclaim in that forum.

Order

The SCA upheld the appeal and set aside the High Court's judgment. It ordered that: The bank's claim be dismissed. The cancellation of the credit agreement be confirmed, and the

bank repays R170 023.23 to Mrs Van Niekerk with interest payable as from 16 April 2018. The bank pays the costs of the suit.