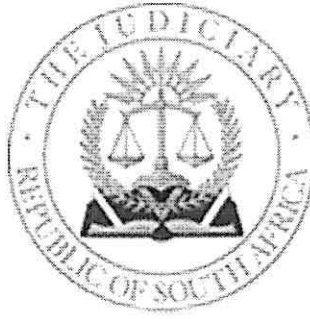




**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: A143/2024

In the matter between:

LLEWELLYN STEVEN JOHNSON

APPELLANT

And

HWR MOTORS t/a RC MOTORS

RESPONDENT

Neutral citation: *LS Johnson v HWR Motors t/a RC Motors* (A143/2024) [2025]
ZAFSHC 244 (15 August 2025)

Coram: Reinders ADJP *et* Chesiwe J

Heard: 14 April 2025

Delivered: 15 August 2025

Summary: *Actio empti* – latent defects – breach of purchase agreement -damages

ORDER

1 The appeal succeeds and each party is ordered to pay its own costs of the appeal.

2 The orders of the magistrate dated 2 February 2024 is set aside *in toto* and replaced with the following order:

'Absolution from the instance is granted with costs.'

JUDGMENT

Reinders, J

[1] It is common cause that the respondent (plaintiff in the court a quo) during July 2022 purchased a 1997 Toyota Hilux from the appellant (defendant in the trial court). Reference to the parties will be as in the trial court. In purchasing the vehicle, the parties signed the plaintiff's standard purchase agreement and the defendant delivered the vehicle to the plaintiff. However, the plaintiff averred that the vehicle had some latent defects making it unfit for the purpose for which it was acquired, namely the resale thereof. Before reselling it, the plaintiff had to spend an amount of R9 640,68 to have the vehicle repaired.

[2] The matter came before the magistrate in Bloemfontein who, having heard the evidence, concluded that the defendant was aware of the defects and failed to disclose same to the plaintiff, thereby to deceive the plaintiff into purchasing the vehicle. It was concluded that the plaintiff proved the quantum of the defects to be the amount claimed by the plaintiff wherefore judgment was entered in favour of the plaintiff.

[3] The defendant, in prosecuting the appeal, applied for condonation for the late prosecution of the appeal which was opposed by the plaintiff. Such condonation was granted and need not further be addressed herein.

[4] On behalf of the plaintiff, its owner and shareholder, Mr Crail, testified how it came about that the purchase agreement was entered into. His employee took the vehicle for a test drive. However, upon starting the vehicle, he heard what was described as strange noises. The defendant assured the witness that it was only a minor problem whereafter the vehicle was loaded onto a trailer and transported from Welkom to Bloemfontein. The next morning the vehicle would not start and the vehicle was inspected by the plaintiff's mechanic who found that the diesel pump was a modification and completely loose, and that water and oil were mixed in the radiator. These were serious problems, causing them to split the engine to fix the cylinder head as well as certain other faults as indicated on the job card. He called the defendant in order to return the vehicle; however, the defendant had already used the money to pay the original owner. According to the witness, the defendant offered to assist him with the costs of the repairs from the commission he got from the sale. He originally believed the defendant when he said the vehicle had a minor problem and was still prepared to take the vehicle, thinking it would not cost him more than R5000 to fix the problem. Eventually, he sold the vehicle. In cross-examination it was put to the witness that there is no proof for the payment of the parts and repairs he avers was undertaken.

[5] The plaintiff called Mr Klue who stated that he had 26 years' experience as a mechanic. He detailed the work he had performed on the vehicle and was of the view that the prices of the parts indicated on the job card were the prices at the time. However, he did not know what was paid for and what not, as he was not responsible for the payment thereof. He testified that the faults he identified would not have been identifiable by a lay person.

[6] The defendant likewise testified and confirmed the agreement of sale. The plaintiff's employee who came to test drive and collect the vehicle was informed by the defendant that the vehicle was old and not everything was perfect. However, he failed to identify these imperfections. His recollection was that a week later he was called

and informed that the vehicle needed repairs to which he offered to help, in his words, 'in a small way'. However, he was not prepared to pay R9000.

[7] It is trite that a court of appeal will not lightly interfere with a trial court's findings of fact and credibility unless it is apparent from the record that the trial court had materially misdirected itself or erred to the extent that its findings were vitiated and fell to be set aside.¹ In *Makate v Vodacom (Pty) Ltd*² the Constitutional Court with reference to *R v Dhlumayo and Another* held as follows regarding the role of a court on appeal in respect of interference:

'But even in the appeal, the deference afforded to a trial court's credibility findings must not be overstated. If it emerges from the record that the trial court misdirected itself on the facts or that it came to a wrong conclusion, the appellate court is duty-bound to overrule factual findings of the trial court so as to do justice to the case. In *Bernert* this Court affirmed:

"What must be stressed here, is the point that has been repeatedly made. The principle that an appellate court will not ordinarily interfere with a factual finding by a trial court is not an inflexible rule. It is a recognition of the advantages that the trial court enjoys, which the appellate court does not. These advantages flow from observing and hearing witnesses as opposed to reading the cold printed word. The main advantage being the opportunity to observe the demeanour of the witnesses. But this rule of practice should not be used to tie the hands of the appellate courts. It should be used to assist, and not to hamper, an appellate court to do justice to the case before it. Thus, where there is a misdirection on the facts by the trial court, the appellate court is entitled to disregard the findings on facts and come to its own conclusion on the facts as they appear on the record. Similarly, where the appellate court is convinced that the conclusion reached by the trial court is clearly wrong, it will reverse it."³

[8] It is so that a latent defect can result in a claim for damages. It would be necessary to prove the existence of the contract, the breach and the damages itself. In our courts, a defect has been defined as 'an abnormal quality or attribute which destroys or substantially impairs the utility or effectiveness of the *res vendita*, for the purpose for which it has been sold or for which it is commonly used'⁴ and the defect

¹ *R v Dhlumayo & Another* 1948 (2) SA 677 (A) at 705-706.

² *Makate v Vodacom (Pty) Ltd* [2016] ZACC 13; 2016 (4) SA 121 (CC).

³ *Ibid* para 40.

⁴ *Holmdene Brickworks (Pty) Ltd v Roberts Construction Co Ltd* 1977 (3) SA 670 (A) at 684. See also *Odendaal v Ferraris* [2008] ZASCA 85; 2009 (4) SA 313 (A).

would be latent if 'it was not visible or discoverable upon an inspection of the *res vendita*'.⁵

[9] I am not convinced that the evidence proves a latent defect in the vehicle of which the absence was warranted. On the contrary, it is the plaintiff's evidence that the defendant informed him of minor problems on the vehicle and that he assumed it could be necessary to repair same. However, he estimated such repairs would amount to R5000. The fact that it ultimately amounted to more than R9000 to repair same constitutes, at best, a mistake in his guess work of how much it would cost. It does not take away from the fact that the defendant did inform him of minor problems the vehicle may have. The evidence of the expert was to the effect that a lay person would not have been able to ascertain or identify what was wrong with the vehicle. There is no evidence that the defendant knew of any particular fault in the vehicle. To me it seems that the plaintiff, who is in the business of buying and selling vehicles, purchased the vehicle at a time when the vehicle was test driven and the plaintiff was aware that money was still to be spent on the vehicle before it could be resold. It seems that if such an amount was below R5000, there would not have been any complaint. The spares included items like an oil filter, air filter, oil and welch plugs. I am of the view that the plaintiff failed to prove any latent defects on the vehicle. But even if I am wrong, I am not satisfied that the adduced evidence proved the necessity of the purchase of all the items in plaintiff's list as part and parcel of the latent defects, nor does it prove the purchase payment and reasonableness of the prices. I would have expected the plaintiff to possess and discover all the invoices and proof of payments of the various items. The onus to so prove was on the plaintiff.

[10] For the reasons stated, I am respectfully of the view that the learned magistrate erred. The appeal in my view should therefore succeed and be replaced with the order we consider to be the correct order, which the court a quo ought to have ordered. In the introductory paragraph of the able heads of argument filed by counsel for the respondent, reference was made to *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum Exportation and Exploitation (SOC) Limited and*

⁵ Ibid.

*Others*⁶ where the trite principle that judicial resources ought to be utilized efficiently and should not be squandered, was confirmed by the apex court. The respondent complained that the appellant ought not have imposed on this Court for a mere amount of R9640.68. In our view, blame cannot be laid solely at the feet of the appellant. The respondent chose to defend the relief claimed by the appellant – for the same mere amount of just over nine thousand rand. We hold the view, therefore, that each party should be ordered to pay its own costs of this appeal.

[11] Accordingly, I make the following order:

- 1 The appeal succeeds and each party is ordered to pay its own costs of the appeal.
- 2 The orders of the magistrate dated 2 February 2024 is set aside *in toto* and replaced with the following order.

'Absolution from the instance is granted with costs.'



REINDERS J

I concur



CHESIWÉ J

⁶ *Normandien Farms (Pty)Ltd v South African Agency for Promotion of Petroleum Exportation and Exploitation (SOC) Limited and Others* [2020] ZACC 5; 2020 (4) SA 409 (CC)

Appearances:

On behalf of the appellant

Instructed by:

JJ Grundling

Du Toit Lambrechts Inc

Bloemfontein

On behalf of the respondent:

Instructed by:

J. Donnelly-Bornman

Neumann Van Rooyen

c/o Phatshoane Henney Inc

Bloemfontein