

**IN THE NATIONAL CONSUMER TRIBUNAL  
HELD IN CENTURION**

Case number: **NCT/173447/2020/73(2)(b)**

In the matter between:

**NATIONAL CONSUMER COMMISSION**

**APPLICANT**

And

**H & F DEALS ON WHEELS CC T/A FAIRDEAL CAR SALES**

**1<sup>st</sup> RESPONDENT**

**FREDERICK DE WIT**

**2<sup>nd</sup> RESPONDENT**

Coram:

Dr MC Peenze – Presiding member

Mr A Potwana – Member

Adv C Sassman – Member

Date of Hearing – 1 November 2022

Date of judgment – 2 November 2022

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**JUDGMENT AND REASONS**

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**APPLICANT**

1. The Applicant is the **National Consumer Commission** (“the NCC” or “the Applicant”), an organ of the state established in terms of section 85 (1) of the Consumer Protection Act 68 of 2008 (“the CPA” or “the Act”) having its registered address at SABS Offices, 1 Dr Lategan Road, Groenkloof, Pretoria.
2. At the hearing, Mr Ludwe Biyana, a senior legal advisor within the Commission, represented the Applicant.

## RESPONDENTS

3. The First Respondent is **H & F Deals on Wheels CC**, registration number 2010/149709/23 (“the First Respondent”) carrying on business at 3 Unie Street, Vereeniging. The First Respondent trades as Fairdeal Car Sales.
4. The Second Respondent is **F De Wit**, the manager of the First Respondent.
5. At the hearing, Mr AS Marais, an attorney from HW Smith and Marais Attorneys, represented the First and Second Respondents (who are collectively referred to as “the Respondents”).
6. The National Consumer Tribunal (“the Tribunal”) conducted the hearing via a Teams technology link.

## JURISDICTION

7. Section 27 (1) (a) (ii) of the National Credit Act, 2005 (“the NCA”) empowers the Tribunal or a Tribunal member acting alone to adjudicate allegations of prohibited conduct by determining whether prohibited conduct has occurred and, if so, by imposing a remedy provided for in the NCA. Section 150 of the NCA empowers the Tribunal to make an appropriate order concerning prohibited or required conduct under the NCA or the CPA. The Tribunal, therefore, has jurisdiction to hear this application.

## TERMINOLOGY

8. A reference to a section in this judgment refers to a section in the CPA. A reference to a regulation refers to the CPA Regulations, 2011 (“the regulations”)<sup>1</sup>.

## APPLICATION TYPE AND THE RELIEF SOUGHT

9. The Applicant brings this application in terms of Section 73 (2) (b).
10. The NCC alleges that it received a complaint, conducted an investigation, and referred the complaint to the Tribunal. The NCC seeks an order:

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<sup>1</sup> Published under Government Notice R293 in Government Gazette 34180 of 1 April 2011.

- 10.1. Declaring the Respondents' contravention of sections 55 (2) (a) to (c), 51(a) and (b), section 56 (2) (b), and 71 as prohibited conduct;
- 10.2. Interdicting the Respondents from engaging in future prohibited conduct;
- 10.3. Directing the Respondents to refund, without penalty and at the Respondents' risk and expense, the defects to the motor vehicle of the complainant in the amount of R60 000.00 (sixty thousand rands) with interest;
- 10.4. Declaring the Respondents to pay an administrative fine in the amount of R1 000 000.00 (one million rands); and
- 10.5. Granting the Applicant such other relief as the Tribunal may consider appropriate contemplated in section 4 (2) (b) (ii).

## **BACKGROUND**

11. It is convenient to set out the background to this matter as reflected in the documents before the Tribunal.
12. This application stems from a complaint received by the Applicant on 7 February 2018 from a consumer, Lehlohonolo Gabriel Mohapi ("Mohapi", "the consumer" or "the complainant"), against Fairdeal Car Sales. The complainant alleged that the Respondents engaged in prohibited conduct by delivering a motor vehicle that failed to satisfy the requirements and standards contemplated in section 55.
13. The complainant alleged that –
  - a) He purchased a Volvo XC90 SUV 2005 motor vehicle ("the vehicle") from Fairdeal Car Sales on or around 27 January 2016;
  - b) Within a day of purchase, the vehicle had a major gearbox transmission failure;
  - c) The complainant approached the dealer to return the vehicle and refund him the purchase price. Fairdeal Car Sales refused; and
  - d) Fairdeal Car Sales subsequently agreed to repair the motor vehicle at the complainant's cost.

14. On the strength of the above, the Applicant formed a reasonable suspicion that the Respondents contravened the CPA.
15. The Applicant subsequently appointed an employee, Ntshengedzeni Netshiinganwe ("Netshiinganwe"), to investigate possible contraventions of the CPA.
16. Netshiinganwe concluded, as appears from his investigation report, that the Respondents had contravened various provisions of the CPA, namely, the Respondents:
  - a) Contravened sections 51 (1)(a) and (b) and 56 (2)(b); and
  - b) Fairdeal Car Sales supplied the complainant with goods that failed to meet the standards of sections 55 (2)(a) to (c).

## **ISSUES TO BE DECIDED**

17. The Tribunal is required to consider and decide the following issues:

17.1 Whether the Applicant has proved a contravention under the CPA; and

17.2 Whether the Applicant is entitled in law to the relief sought.

## **THE HEARING**

18. During the hearing on 1 November 2022, the parties were advised that the "*in limine*" defence regarding prescription had been dealt with during a previous hearing. A judgment had been subsequently issued, confirming the dismissal of the "*in limine*" defence of prescription. Accordingly, the Tribunal is left with the inquiry into whether the goods forming the subject of the complaint have failed to satisfy the requirements of section 55 (2). Forthwith, this judgment deals solely with the merits of the application, and this Tribunal panel does not express an opinion on the prescription of the matter.
19. The Tribunal then allowed argument by both parties relating to the allegation that the goods failed to satisfy the requirements of section 55 (2), and whether, as a result, the Respondents contravened the CPA.

20. During the hearing, the Applicant conceded that the allegation regarding the transgression of section 79 by the Respondents is misplaced. Accordingly, its prayer relating to such alleged transgression fell away.
21. Further, the Applicant conceded that the facts before the Tribunal do not present a case against the Second Respondent. Accordingly, the case against the Second Respondent was retracted.
22. The Applicant submitted that the matter was very important to the complainant, as the defect in the vehicle is putting his safety at risk. The Applicant outlined how the complainant went to great lengths to ensure proper compliance with the processes of the Act. However, the First Respondent persisted in their refusal to recognise their obligation to refund or repair the faulty vehicle. As it is common cause that the First Respondent had not attended to these defined defects, the same defects persist.
23. The Applicant also confirmed that the First Respondent consistently failed to collect the vehicle. All attempts to return the vehicle to the First Respondent were met with resistance.
24. The Applicant submitted to the Tribunal that the vehicle is not reasonably suitable for the purposes for which the vehicle is generally intended, namely, to safely take the consumer from point A to B. Further, the vehicle is not of good quality, in good working order, and free of defects.
25. The Applicant demonstrated that the major gearbox failure presents a defect in terms of section 53, as the vehicle was unable to perform as reasonably expected. Further, the Applicant argued that the referral to “no guarantees” in the First Respondent’s invoice was invalid, as parties cannot negate the statutory guarantee provided in section 56.
26. According to the Applicant, the First Respondent’s insistence that they would only repair the vehicle at the cost of the consumer, is also misplaced and in contravention of section 56. The Applicant emphasized how the First Respondent initially refused to be accountable for the repairs and then later indicated that they would repair the vehicle at the cost of the consumer. Irrespective, the First Respondent consistently refused to accept the return of the vehicle and to refund the consumer as requested.
27. The Applicant alluded to the events of 26 January 2016, when an employee of the First

Respondent took the consumer home. This employee drove the vehicle and during this trip, the gearbox defaulted. On 27 January 2016, after the consumer drove the vehicle for about one hour,

the gearbox defaulted again, and the consumer returned it to the First Respondent on the same day and requested a refund. The consumer's request was denied. According to the Applicant, the consumer has the right to return or request repairs to the vehicle within six months after the delivery of the vehicle, without penalty and at the First Respondent's risk and expense, because the vehicle has failed to satisfy the requirements and standards as outlined in section 55.

28. The First Respondent alleged that the vehicle was sold on 27 January 2016, the date that payment was affected. However, the First Respondent did not deny the events that occurred on 26 January 2016, namely the gearbox malfunctioning while being driven by one of its own employees.
29. Further, the First Respondent alleged that there is a possibility that the gearbox broke down during the consumer's trip to Villiers on 27 January 2016. According to the First Respondent, the consumer took possession of the vehicle on 27 January 2016, took the vehicle to Villiers, potentially abused the vehicle and as a result, the vehicle was towed to the First Respondent's premises and left in front of the premises. The First Respondent insisted that a diagnostic report is required in order to identify the actual reason for the breakdown of the gearbox, by lack of which there is no proof that there were any defaults in the vehicle at the time of purchase.
30. In addition, the First Respondent objected to the Applicant's failure to include a confirmatory affidavit by the consumer. The First Respondent alluded strongly to the fact that the consumer agreed to accept the vehicle with defects. According to the First Respondent, the consumer must first provide a diagnostic report, outlining exactly what is wrong with the vehicle, before the supplier will be liable for repair or refund. Accordingly, the First Respondent believed that there was no evidence of gearbox damage at the time the vehicle was delivered to the complainant.

## **THE PROVISIONS OF THE CPA**

31. Section 51 outlines certain prohibited transactions, agreements, terms, or conditions. Subsections 1 (a) and (b) detail as follows:

“ 51 (1) A supplier must not make a transaction or agreement subject to any term or condition if—  
    (a) its general purpose or effect is to—  
        (i) defeat the purposes and policy of this Act;

- (ii) mislead or deceive the consumer; or
  - (iii) subject the consumer to fraudulent conduct;
- (b) it directly or indirectly purports to—
- (i) waive or deprive a consumer of a right in terms of this Act;



- (ii) avoid a supplier's obligation or duty in terms of this Act;
- (iii) set aside or override the effect of any provision of this Act; or
- (iv) authorise the supplier to—
  - (aa) do anything that is unlawful in terms of this Act; or
  - (bb) fail to do anything that is required in terms of this Act;

**32.** Part H of the CPA sets out a consumer's right to fair value, good quality and safety. Section 53 sets out the following -

**53.** (1) In this Part, when used concerning any goods, component of any goods, or services—

(a) "**defect**" means—

- (i) any material imperfection in the manufacture of the goods or components, or in performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or
- (ii) any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances;

(b) "**failure**" means the inability of the goods to perform in the intended manner or to the intended effect;

**33.** Section 55 sets out the consumer's rights to goods that are reasonably suitable for the purpose intended and are free of any defects –

### **Consumer's rights to safe, good quality goods**

**55.**

(1) This section does not apply to goods bought at an auction, as contemplated in section 45.

(2) Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that—

- (a) are reasonably suitable for the purposes for which they are generally intended;
- (b) are of good quality, in good working order and free of any defects;
- (c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
- (d) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.

**34.** Section 56 provides a six-month period within which the goods can be repaired, replaced or returned for a refund.

### **Implied warranty of quality**

**56.**

(1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each

warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.

- (2) Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either—
  - (a) repair or replace the failed, unsafe or defective goods; or
  - (b) refund to the consumer the price paid by the consumer for the goods.
- (3) If a supplier repairs any particular goods or any component of any such goods, and within three months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier must—
  - (a) replace the goods; or
  - (b) refund to the consumer the price paid by the consumer for the goods.
- (4) The implied warranty imposed by subsection (1), and the right to return goods set out in subsection (2), are each in addition to—
  - (a) any other implied warranty or condition imposed by the common law, this Act or any other public regulation; and
  - (b) any express warranty or condition stipulated by the producer or importer, distributor or retailer, as the case may be.

## ANALYSIS

35. The Applicant's version relating to the vehicle having been defective at the time of purchase, is accepted by the Tribunal as true and correct. The Tribunal took note of the undisputed fact that the First Respondent's employee experienced gearbox problems with the vehicle on 26 January 2016, in the presence of the consumer. This fact is *prima facie* evidence that the gearbox was already defaulting to some extent on 26 January 2016. The Respondents did not provide any acceptable answer to such an incident.
36. The perceived confusion about whether the vehicle was purchased on 26 or 27 January 2016, is not material. It is common cause that the vehicle was purchased on or around 27 January 2016 and that the consumer attempted to return the vehicle on 27 January 2016, following a fatal malfunction of the gearbox. For purposes of clarity, the Tribunal confirms that it is not compulsory to include an affirmatory affidavit signed by the consumer in matters where the NCC approaches the Tribunal and where the Applicant relies on a properly evidenced report by the assigned investigator.

- 37.** Similarly, the First Respondent failed to present any evidence that the defaults pertaining to the gearbox were explained to the consumer prior to purchase and that the consumer accepted such defaults in writing. By including a narrative in the purchase invoice indicating “no guarantees” or “the client will fix”, the First Respondent attempted to negate their responsibility in terms of the CPA.
- 38.** The First Respondent's insistence that the consumer had to obtain a diagnostic report is misplaced in the circumstances of this matter. It is acknowledged that a diagnostic report could provide clarity on the cause of gearbox malfunctioning. However, the undisputed facts before the Tribunal are that the gearbox malfunctioned on 26 January 2016 and a malfunctioning gearbox makes driving difficult. An adequate opportunity was provided to the First Respondent to accept the return of the vehicle and to obtain a diagnostic report at their own cost. The First Respondent chose not to do that.
- 39.** By failing to advise the complainant in advance that the vehicle has a malfunctioning gearbox and to obtain a written acceptance of such default, the Tribunal finds that the First Respondent did not take the safety of the consumer seriously. From the evidence before the Tribunal, it is also undisputed that the First Respondent was made aware of the faulty gearbox on 27 January 2016 and refused to repair such defects or refund the consumer.
- 40.** When applying the provisions of the CPA to the facts accepted by the Tribunal, it becomes clear that the vehicle, as supplied by the First Respondent, was defective. Based on the evidence presented, the First Respondent undertook to supply a safe vehicle, free from any defects. As the First Respondent supplied the vehicle to the complainant within the context of a transaction under the CPA, it can be held responsible for any defects in the goods.
- 41.** The following analysis motivates the Tribunal's conclusion: Section 55 stipulates that goods have to be reasonably suitable for the purposes for which they are generally intended, of good quality, in good working order and free of any defects, and should be useable and durable for a reasonable period of time (having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply).
- 42.** The CPA aims to protect consumers such as the Applicant from exploitation and abuse in the marketplace. As outlined above, the CPA will be ineffective unless there is a proper enforcement mechanism, affordable to consumers. It is therefore desirable to promote an

economic

environment that supports and strengthens a culture of consumer rights and responsibilities, business innovation, and enhanced performance.

- 43.** As outlined above, section 55(2) provides that all goods must be reasonably suitable for the purposes for which they are generally intended, of good quality, in good working order, and free of any (not only material) defects. The goods must be useable and durable for a reasonable period of time. When a latent defect is present, the product lacks the quality promised in the sale agreement. The consumer then has the choice of a refund, replacement, or repair of the goods in terms of section 56. This responsibility of the supplier can, in turn, also be regarded as an implied warranty.<sup>2</sup>

### **Implied warranty**

- 44.** In terms of section 56(1), the transaction is subject to an implied warranty by the First Respondent as the supplier. By implication, the goods supplied or distributed should comply with the statutory quality requirements and standards.
- 45.** This implied warranty is not applicable in instances where the consumer was informed of the specific condition of the products, and the consumer expressly accepted the product on that basis or knowingly acted in a way compatible with accepting the product in that condition.
- 46.** However, in the matter before the Tribunal, the complainant did not expressly accept the vehicle on the basis that there were certain quality defects in the vehicle that were present and therefore expressly accepted by the complainant. The Applicant submitted that the opposite was true, namely that the First Respondent sold the complainant a supposedly safe and good quality vehicle with no defects. The Respondent withheld critical information relating to the condition of the vehicle, and in particular the faulty gearbox, from the complainant, which information should have been communicated to the complainant before the sale.
- 47.** The mere fact that a vehicle is sold second-hand is not a proper excuse for any supplier not to convey the truth about the actual state of the vehicle being sold.
- 48.** The CPA places a strong responsibility on the supplier to ensure that all defects of a particular vehicle are determined and explained to the consumer before selling a second-hand vehicle.

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<sup>2</sup> *Barnado v National Consumer Commission and Others* (47933/17) [2021] ZAGPPHC 531 (26 August 2021), par 46.

Where such defects would render the vehicle non-compliant to the standard as set by the Act, it is subsequently expected from the supplier to ensure the consumer expressly agrees in writing to such defects before completing the sale and delivering the vehicle.

### **Right to return vehicle for a refund**

49. In its application before the Tribunal, the Applicant relied on the provisions of the CPA, in that the supply of the vehicle to the complainant contravened the implied warranty of quality contained in section 55(2)(b) and (c). Based on the evidence before it, the Tribunal finds that the only inference to be drawn was that the vehicle's defects and other damages must have been present at the time of its purchase from the First Respondent.
50. According to the evidence before the Tribunal, the defects in the vehicle are serious, evidenced by the fact that the vehicle had to be towed to the First Respondent's premises and that driving the vehicle is difficult with a faulty gearbox.
51. Accordingly, the Tribunal finds that the malfunctioning of the gearbox constitutes a defect within the meaning of section 53 (1) (a) on several grounds, rendering the goods less acceptable, less practical, or useful. This defect became apparent within one day after the purchase of the vehicle and, therefore, within the statutory warranty period of six months. The complainant, therefore, has recourse under section 56.
52. By failing to respect the consumer's rights to return the vehicle at the supplier's expense and to be refunded, the First Respondent is not only exerting prohibited conduct as defined in the CPA.<sup>3</sup> The First Respondent is also infringing on the complainant's right to fair consumer practices and his right to safe and good quality goods. This continuous conduct is alarming.

### **CONCLUSION**

53. In the Tribunal's view, the vehicle did not satisfy the requirements of section 55 (2), because the vehicle was not suitable for its intended purpose; was neither of good quality nor in good working order and free of defects; and 'plainly' not safe and usable for a reasonable time. Therefore, the complainant was entitled in terms of section 56 (2) (b) to return the vehicle at the First Respondent's expense for a refund.

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<sup>3</sup> Section 1 of the CPA defines prohibited conduct as "an act or omission in contravention of this Act".

54. The Tribunal is further satisfied that the complainant attempted to return the vehicle to the First Respondent. However, the First Respondent refused the return of the vehicle at its expense. Due to the First Respondent's refusal, the complainant does not have to account for the vehicle's use, depletion or deterioration over time. By failing to take possession of the vehicle and repair the vehicle as requested, the vehicle's risk shifted to the First Respondent.
55. After considering all the evidence, the Tribunal is satisfied that the First Respondent seriously infringed upon the complainant's right to a refund of the purchase price. The intention of section 56(4) is to provide additional statutory protection in the form of an implied warranty to the consumer. This statutory implied warranty will apply in instances like this, where the consumer's right to return faulty goods must be respected irrespective of any other warranty that may also exist, such as maintenance insurance or any other implied condition.
56. Suppliers should understand that they remain responsible for delivering goods that are safe and of good quality. It is the suppliers' responsibility to repair goods that do not comply with the expected standard, and the consumer should not be required to use any of its own means to ensure such repair. Similarly, where the consumer chooses to obtain a refund, such a request must be honoured. The responsibility remains that of the First Respondent, as the supplier, to respect the inherent statutory warranty, accept the return of the vehicle, and refund or replace the vehicle as requested by the consumer.
57. The Tribunal wishes to express its utter disappointment in how the First Respondent treated the Applicant as a consumer. The Tribunal noted with concern the First Respondent's total disregard for the rights of consumers to receive honest and transparent dealings, proper service, and good quality goods. Second-hand vehicles are not excluded from the protection of the CPA, and such vehicles are sold with the supplier's accountability and responsibility for repairs or refunds. Therefore, by refusing the refund in terms of section 56(2), the First Respondent's conduct is a clear example of prohibited conduct in terms of the Act.

## **FINDING**

58. The Tribunal is persuaded that the Applicant has proved a contravention under the CPA. The First Respondent displays continuous prohibited conduct by refusing to accept the return of the vehicle and to refund the consumer, irrespective of the inherent statutory warranty that the

consumer may return unsafe goods within the first six months of purchase and request repairs or a refund.

59. The Tribunal finds that the First Respondent retains the risk for any damages to the goods following its refusal to collect or accept the return of the defective goods.
60. By indicating on the purchase invoice that the “client will fix”, without explicitly outlining the faults of the vehicle, the First Respondent directly or indirectly purported to deprive the consumer of a right in terms of the Act. The consumer was also misled regarding the quality of the vehicle.
61. Consequently, the Tribunal finds that the First Respondent contravened sections 51 (1)(a) and (b), 55 (2), and 56 (2), constituting prohibited conduct.
62. In the matter of *Coertze and Burger v Young*<sup>4</sup> it was confirmed that the Tribunal may, in terms of its statutory authority in terms of section 75(4)(b), make any applicable order contemplated in the CPA or in Section 150 or 151 of the National Credit Act, 34 of 2005 to provide an “*applicable order*.”
63. Accordingly, the Tribunal finds that the First Respondent has contravened sections 55(2)(a) to (c) and Section 56(2)(b); and this conduct constitutes prohibited conduct.
64. The Tribunal further finds that the Applicant is entitled in law to a full refund of the vehicle's purchase price. The Applicant did not convince the Tribunal of the latter's authority to also grant interest on the said amount. Accordingly, the Tribunal finds that interest on the vehicle's purchase price cannot be granted by the Tribunal. The First Respondent, in turn, is entitled at its cost to recover the vehicle from the Applicant.

## **OTHER REQUESTED ORDERS**

### **Consideration of an administrative fine**

65. The Applicant requested that the Tribunal imposes an administrative fine on the First Respondent.
66. The Applicant submitted argument on the factors listed in section 112(3) of the CPA that the



<sup>4</sup> NCT/7142/2012/73(3)&75(b)&(2)CPA.

Tribunal must consider.

67. Considering the nature of the contraventions and the importance of this issue for consumers, the Tribunal regards a fine as appropriate and justified. The sale of vehicles is a large industry in South Africa. This industry impacts consumers daily. A clear message must be sent that non-compliance with the CPA will not be condoned or tolerated.
68. The nature, duration, gravity, and, extent of the contravention  
The nature of the contravention is serious. A motor vehicle is an important asset that a consumer will purchase. The complainant was deprived of the proper and safe use of the vehicle that he purchased, for a period of 6 years.
69. Any loss or damage suffered as a result of the contravention  
The complainant in essence lost the sum of R60 000.00 paid to the First Respondent in that he has not had the benefit of the repair of the vehicle; or the return of the purchase price. Although the vehicle is still in his possession, the vehicle is not safe to use. The Applicant placed on record that being without the use of his vehicle caused the complainant stress and unnecessary inconvenience.
70. The behaviour of the First Respondent  
The First Respondent failed to recognise its responsibilities in terms of the CPA. This behaviour is indicative of a dismissive attitude towards the rights of consumers, such as the complainant.
71. The market circumstances in which the contravention took place  
No specific evidence was provided to the Tribunal. However, based on the types of matters referred to the Tribunal it would appear that vehicle-related complaints against motor vehicle repairers are very common. For the average consumer, the purchase of a vehicle constitutes an extremely costly and important transaction.
72. The level of profit derived from the contravention  
No specific evidence was provided in this regard. Again, the First Respondent would have derived the significant benefit of having the complainant's purchase amount of R60 000.00, while choosing not to repair the vehicle or refund the consumer.

- 73.** The degree to which the respondent has co-operated with the Commission and the Tribunal  
Based on the Applicant's submissions the First Respondent co-operated with the NCC's investigator.
- 74.** Whether the respondent has previously been found in contravention of this Act.  
The NCC submitted that there is no record of a previous investigation or finding against the First Respondent.
- 75.** The Applicant did not submit any evidence of the turnover of the First Respondent. The Tribunal can, however, still impose a fine that is limited to a maximum fine of R1 000 000.00 (one million rand).
- 76.** In this matter, the Tribunal is persuaded that a strong message must be sent that second-hand car dealers cannot escape the peremptory provisions of the CPA. Their services must be aligned with the CPA. Consumers must be protected against repairers that accept the purchase amount and do not repair a consumer's vehicle or refund the consumer.
- 77.** The Tribunal must however also consider that the fine must not be so punitive as to discourage second-hand car dealers from engaging in a necessary and lawful business. It must further be kept in mind that the fine imposed would be for a first offender as such. Further transgressions would be met with significantly higher penalties.
- 78.** The Tribunal finds that a fine of R60 000.00 will be appropriate in this circumstance.
- 80.** The Applicant requested that the Tribunal makes an order interdicting the First Respondent from engaging in prohibited conduct in the future. Given the Act's provisions, the interdict will serve no purpose because the First Respondent may not engage in prohibited conduct<sup>5</sup>.

## **ORDER**

**81.** Accordingly, the Tribunal makes the following order:

81.1. The First Respondent has contravened Section 51 (1) (a) and (b), Section 55 (2) (a) to (c) and Section 56 (2) (a) of the CPA;

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<sup>5</sup> *Shoprite Investments Ltd v The National Credit Regulator* (509/2017 dated 18 December 2019).

- 81.2. The contraventions are declared prohibited conduct in terms of section 150 (a) of the NCA;
- 81.3. The First Respondent is ordered to pay, R60 000 (sixty thousand rands), being the purchase price of the vehicle, within 15 business days after issuing of this judgment, to the complainant, Lehlohonolo Gabriel Mohapi;
- 81.4. The First Respondent is at its own cost to collect the vehicle from the complainant, Lehlohonolo Gabriel Mohapi, at an address the Applicant is to provide to the First Respondent within five business days after issuing of this judgment;
- 81.5. The Applicant is directed to ensure the execution of the order for re-payment of the purchase price of the vehicle to the complainant;
- 81.6. The First Respondent is within 90 business days of the date of issue of this judgment to pay an administrative fine of R60 000.00 (sixty thousand rands) into the National Revenue Fund's following bank account:

Bank: The Standard Bank of South Africa

Account holder: Department of Trade and Industry

Branch name: Sunnyside

Branch code: 05100

Account number: 317 650 026

Reference: NCT/173447/2020/73(2)(b) and the name of person or business making the payment;  
and

- 81.7. There is no order as to costs.

Dated in Centurion on 3 November 2022.

[signed]

**Dr MC Peenze**

**Presiding Tribunal Member**

**Authorised for issue by The National Consumer Tribunal**

**National Consumer Tribunal**

**Ground Floor, Building B**

**Lakefield Office Park**

**272 West Avenue, Centurion, 0157**

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**national consumer tribunal**



With Adv C Sassman (Tribunal member) and Mr A Potwana (Tribunal member) concurring.