

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

Case number: **NCT/222616/2022/73(2)(b)**

In the matter between:

NATIONAL CONSUMER COMMISSION

APPLICANT

And

ACS PRE-OWNED (PTY) LTD

RESPONDENT

Coram:

Dr MC Peenze – Presiding member

Adv S Mbhele – Member

Ms P Manzi – Member

Date of Hearing – 4 October 2022

Date of judgment – 6 October 2022

JUDGMENT AND REASONS

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, supported by Ms Ntsako Ngobeni.

RESPONDENT

3. The Respondent is ACS Pre-Owned (Pty) Ltd, a private company duly registered in terms of the company laws of the Republic of South Africa ("ACS" or "the Respondent"). The physical address of the Respondent is 52 Ampthill Avenue, Benoni, Gauteng.
4. The Respondent opposed the application and filed the required opposing papers. However, the Respondent failed to attend the hearing.
5. The National Consumer Tribunal ("the Tribunal") conducted the hearing via a Teams technology link. During the hearing, officials from the Tribunal's Registrar ("the Registrar") advised the Tribunal panel that the notice of set-down and digital link for the online hearing had been sent to the Respondent. The Tribunal was satisfied that the Respondent was adequately informed of the date and time of the hearing. Therefore, the Tribunal proceeded with the hearing as set down, in the absence of the Respondent, in accordance with Rule 24 (1) (b) of the Tribunal Rules.¹

JURISDICTION

6. 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.

APPLICATION TYPE AND THE RELIEF SOUGHT

7. The Applicant brings this application in terms of Section 73 (2) (b) of the CPA.
8. The NCC alleges that it received a complaint, conducted an investigation, and referred the complaint to the Tribunal. The NCC seeks an order:
 - 8.1. Declaring the Respondent's contravention of section 55 (2) (a) to (c) and section 56 (2) (b) of the CPA as prohibited conduct;

¹ Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal published under GN789 of 28 August 2007.

- 8.2. Interdicting the Respondent from engaging in future prohibited conduct;
- 8.3. Directing the Respondent to repair, without penalty and at the Respondent's risk and expense, the defects to the Motor Vehicle, as identified in the "full report" issued by Ronnies Motors Bodyworks, dated 03/09/2020.
- 8.4. Declaring the Respondent to pay an administrative fine in the amount of R1 000 000.00 (one million rands); and
- 8.5. Granting the Applicant such other relief as the Tribunal may consider appropriate contemplated in section 4 (2) (b) (ii) of the CPA.

BACKGROUND

10. It is convenient to set out the background to this matter as reflected in the documents before the Tribunal.
11. This application stems from a complaint received by the Applicant from a consumer, Mzukisi Zangwa ("the complainant"), who alleged that the Respondent engaged in prohibited conduct by delivering a motor vehicle that failed to satisfy the requirements and standards contemplated in section 55. By supplying the consumer with a motor vehicle that failed to meet the requirements and standards contemplated in section 55, the Applicant submitted the Respondent acted in contravention of section 55 (2) (a) to (c).
12. On or about 13 July 2020, the complainant purchased a second-hand 2017 Mercedes Benz E200 ("the vehicle") for the amount of R589 900.00 (five hundred and eighty-nine thousand and nine hundred rands). The Respondent delivered the vehicle at the complainant's place of residence close to midnight on the 13th of July 2020 with an odometer reading of 41 400 kilometres.
13. At the heart of the complaint is that the vehicle manifested symptoms of various defects the next day, in that the complainant noticed that the vehicle displayed a fault message relating to the headlights' intelligence system. The complainant also noticed that the vehicle's front number plate holder, moulding, and rear name badge were missing. The complainant immediately communicated these defects to the supplier.

14. Forthwith, the complainant took the vehicle to Star Motors, an approved Mercedes Benz workshop in East London, on 17 July 2020. Star Motors was not prepared to accept the vehicle and advised the complainant to approach an approved panel beater since there appeared signs of accident repairs on the vehicle.
15. Subsequently, the complainant took the vehicle to Ronnies Bodyshop East London ("Ronnies") for a full vehicle assessment. Ronnies issued the complainant with a repair report² on 17 July 2020.
16. The complainant informed the supplier that Ronnies had identified various repairs previously done on the vehicle, which repairs were not disclosed to the complainant before purchase. These repairs included the following:
 - 1.) The front bumper has been repaired and painted, PDC sensors and surround have paint build-up around them, proof of repairs having been done.*
 - 2.) Front radiator grille has been repaired and painted.*
 - 3.) RS headlamp is still loose, not fastened properly into place, proof of remove & refit / possible replacement.*
 - 4.) Bonnet has been worked on, proof in the bad alignment and hinge bolt being different on either side from each other and touched up. RS one is even snapped off. LS bonnet lies lower than the LF fender, big gap between LS roof moulding and bonnet edge compared to the RS bonnet and moulding.*
 - 5.) LF fender has been repairs, proof of this in bad alignment and bolts bn brush-touched. Colour is slightly out.*
 - 6.) LF door has also been remove as, the inside main door plug unit is loose.*
 - 7.) LR Fender has been repaired, and filled with body filler.*
 - 8.) Bootlid has been worked on and the inner RS has a rubber grommet missing, the paintwork inside the grommet has bubbles / rough finish. The bootlid name badges and series badges have not been replaced. Edges of the bootlid paint is roughly finished.*
 - 9.) Rear bumper has been painted as well, proof of polishing on the lower black moulding (polish marks on black plastic pieces).*
 - 10.) Brake calipers have also been spray painted paint cracking."*³
17. In response to the report, the Respondent requested a quotation to repair the vehicle. After receipt of the quotation, the Respondent requested the complainant to deliver the vehicle in Johannesburg

² Annexure D1-2 of the Inspector's Report.

³ See Repair Report, dated 17 July 2020, on page 47 of the Tribunal Bundle.

to enable the supplier to inspect the vehicle and effect necessary repairs. The complainant provided the quotation but did not agree that he should drive the vehicle about 1000 kilometres between East London and Johannesburg. On 30 July 2020, the Respondent advised the complainant that it agreed to have the said vehicle repaired in East London, but later, on 3 August, the Respondent rescinded such undertaking and denied responsibility to repair the vehicle altogether.

- 18.** Irrespective, the complainant requested clarity on how the delivery of the vehicle to the Respondent should occur. The Respondent failed to respond and provide such clarity. It also failed to further correspond with the complainant.
- 19.** The complainant subsequently referred the matter to the Motor Industry Ombudsman of South Africa (“MIOSA”). When engaged by MIOSA, the supplier offered the complainant an amount of R21 236.25 for the replacement of the windscreen, fitment, and calibration as quoted. The complainant rejected the offer.
- 20.** The complainant expected the Respondent to repair the vehicle to a safe and good condition, in accordance with the quotation from Ronnies, dated 3 August 2020.⁴ This quotation amounted to a total repair cost of R110 957.32.
- 21.** MIOSA subsequently concluded by recommending that the supplier must collect the vehicle from the consumer at their own expense and repair it as per the assessment report (“the Ronnies quotation”), as supplied by the complainant, dated 3 August 2020. The supplier failed to comply with MIOSA’s recommendation.
- 22.** On 29 March 2021, the NCC approved a formal investigation into the complaint and appointed Shumai Mudau and Ntshengedzeni Netshiinganwe to investigate the complaint.
- 23.** Based on the assessment of the information gathered during the investigation of this complaint, the Applicant concluded that the Respondent had contravened section 56 (2) in that, within six months of the delivery of goods, the motor vehicle failed to satisfy the requirements and standards contemplated in section 55.⁵ The Applicant submitted that the vehicle was diagnosed as having serious defects since the date of delivery.
- 24.** By failing to collect and repair the vehicle, as elected by the complainant, the Respondent allegedly

⁴ See Annexure F5 on page 55 of the Tribunal Bundle.

⁵ See para 7.3.2 of the Applicant's founding affidavit.

contravened section 56 (2).

ISSUES TO BE DECIDED

- 25.** The Tribunal is required to consider and decide the following issues:
- 25.1 Whether the Applicant has proved a contravention under the CPA; and
 - 25.2 Whether the Applicant is entitled in law to the relief sought, namely the repair of the vehicle.

THE HEARING

- 26.** The Respondent failed to appear at the hearing on 4 October. The Tribunal panel provided an opportunity for the Applicant to argue the merits of the matter and considered the submissions made by the Respondent in its answering affidavit.
- 27.** The Applicant submitted that the matter was very important to the complainant, as the defects in the vehicle are 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 Respondent persisted in its refusal to recognize its obligation to repair the faulty vehicle. As it is common cause that the Respondent had not attended to these defined defects, the same defects persist.
- 28.** The Applicant also confirmed that the Respondent consistently failed to collect the vehicle. All attempts to return the vehicle to the Respondent were met with resistance after 3 August 2020.
- 29.** The Applicant referred to the deliberations before the MIOSA, indicating that the Respondent was not prepared to address the faults diagnosed by Ronnies and limited its offer to a selected number of faults. More particularly, 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 him from point A to B. Further, the vehicle is not of good quality, in good working order, or free of defects.
- 30.** Due to the poor visibility resulting from the failure by the Respondent to repair the headlights default, the complainant hit a dog, which further damaged the left corner of the front bumper. Although the complainant repaired the damage to the front bumper at his own expense, the

accident could have been prevented if the Respondent provided a safe vehicle in good condition or subsequently repaired the faulty headlights.

- 31.** The Applicant also submitted written correspondence with “Kirk”, who advertised the same vehicle on Gumtree, in which correspondence “Kirk” confirms that the vehicle was involved in an accident and repaired.⁶
- 32.** The major defects as outlined in the diagnostic report include, amongst others, the following:
 - a. Multifunction camera fault;
 - b. Headlight’s intelligence system fault (automatic dim and bright);
 - c. Windscreen faulty;
 - d. Poor fitment and calibration;
 - e. Cracks on the centre console and windscreen;
 - f. Fault of the callipers / active brake assist;
 - g. Front number plate holder and mouldings missing;
 - h. Name badge missing; and
 - i. Various faults resulting from the poor post-accident repair.
- 33.** According to the written submissions made by the Respondent, the vehicle was sold with the Motor Plan still intact, and a quality check was done by Mercedes Benz East Rand Mall before purchasing by the complainant. According to the Respondent, the reason for this check was to ensure that the vehicle was still Mercedes Benz approved, by lack of which the Motor Plan would have been cancelled immediately. Accordingly, the Respondent believed that there was no evidence of accident damage at the time the vehicle was delivered to the complainant.
- 34.** The Respondent submitted that the damage had to have happened while the vehicle was in the possession of the complainant, as the Respondent would not risk selling a vehicle with accident damage, as that could amount to the company being expelled as an accredited dealer.
- 35.** The Respondent submitted that the complainant provided haphazard information about the various defaults. According to the Respondent, the alleged damages must have occurred and then been poorly repaired by the consumer between 14 July 2022 when the vehicle was delivered, and 17 July 2022, when the diagnostic report was obtained.

⁶ See Annexure J1-6 of the Investigation Report.

36. The Respondent did not dispute the advertising of the same vehicle by a different supplier on Gumtree but denied that the vehicle was indeed in an accident prior to it having been sold by the Respondent to the complainant. Similarly, the Respondent did not dispute that the vehicle was defective and that the defects qualify as defects as mentioned in section 53. The Respondent based its defence on the probability that the damages were affected while the vehicle was in the possession of the consumer.
37. The Respondent did not explain why the vehicle's name badge and number plate mounting were missing and why the bumper alignment was unsatisfactory. Apart from acknowledging that the vehicle was indeed provided to the complainant without these necessities, the Respondent did not provide any plausible explanation for the omission.
38. According to the Applicant, the complainant 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 Respondent's risk and expense, because the vehicle has failed to satisfy the requirements and standards as outlined in section 55.

THE PROVISIONS OF THE CPA

39. Part H of the CPA sets out a consumer's right to fair value, good quality and safety. Section 53 of the CPA 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;

40. 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.

41. 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

42. The Applicant's version relating to the vehicle having been involved in a collision and extensively poorly repaired, is accepted by the Tribunal as true and correct. It is not clear how the vehicle passed the quality check with Mercedes Benz, save to indicate that the Respondent failed to provide an acceptable explanation and failed to attend the hearing to answer this issue.
43. By failing to inform the complainant in advance that the vehicle had been involved in an accident, the Tribunal finds that it did not take the safety of the consumer seriously. From the evidence before the Tribunal, it is also undisputed that the Respondent was aware of some of the visible defaults prior to despatching the vehicle to the complainant. Irrespective, the Respondent failed to repair such defects prior to despatching the vehicle and afterward refused to do so.
44. When applying the provisions of the CPA to the facts accepted by the Tribunal, it becomes clear that the vehicle, as supplied by the Respondent, was defective. Based on the evidence presented, the Respondent undertook to supply a safe vehicle, free from any defects. As the 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.
45. The following analysis motivates the Tribunal's conclusion: Section 55 stipulates that 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 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). The directive from the MIOSA recommendations was that the Respondent should collect the vehicle in question at their risk and expense and attend to the complainant's concerns.
46. MIOSA's recommendations give effect to clause 23.11 of the South African Automotive Industry Code of Conduct promulgated in terms of Section 82 of the Act by way of Government Notice 817 of 17 October 2014. The recommendations are in line with Section 70 (3) (a) of the Act. The Respondent is bound by the recommendations and ought to have implemented them.
48. 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.

- 49.** As outlined above, section 55(2) of the Act 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. 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.⁷

Implied warranty

- 50.** In terms of section 56 (1) of the Act, the goods supplied or distributed should comply with the statutory quality requirements and standards.
- 51.** 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.
- 52.** 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 him. The Applicant submitted that the opposite was true, namely that the 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 from the complainant, in particular the huge amount of post-accident repairs, which information should have been communicated to the complainant before the sale.
- 53.** 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.
- 54.** The Tribunal 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. Where such defects would render the vehicle non-compliant to the standard as set by the Act, it

⁷ Barnado v National Consumer Commission and Others (47933/17) [2021] ZAGPPHC 531 (26 August 2021), par 46.

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 repair

55. In his 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 sections 55 (2) (b) and (c) of the CPA. 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 Respondent.
56. According to the evidence before the Tribunal, the defects in the vehicle are very serious, evidenced by the fact that it requires various replacements of parts and repairs.
57. Accordingly, the Tribunal finds that the various defects outlined in the diagnostic report constitute defects within the meaning of Section 53 (1) (a) on several grounds, rendering the goods less acceptable, less practical, or useful. Most of these defects became apparent within one day after the consumer received the vehicle. All defects were identified within three days after the purchase of the vehicle and, therefore, within the statutory warranty period of six months. The complainant, therefore, has recourse under Section 56 of the CPA.
58. By failing to respect the consumer's rights to return the vehicle at the supplier's expense and to repair the alleged defects, the Respondent is not only exerting prohibited conduct as defined in the CPA.⁸ The 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 as the MIOSA finding gave direction to the parties, and the Respondent chose to ignore the finding and recommendations.
59. The Tribunal would like to express its disappointment in the disrespect shown in this matter for the finding of the MIOSA. The MIOSA is an impartial ombud and focuses on the resolution of disputes. It makes recommendations in cases referred to it where all parties cannot reach mutually acceptable agreements when a dispute arises. Therefore, as part of the alternative dispute resolution structure designed to assist consumers in the motor vehicle industry, the recommendations of MIOSA must be taken seriously.

⁸ Section 1 of the CPA defines prohibited conduct as "an act or omission in contravention of this Act".

CONCLUSION

60. 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) to return the vehicle at the Respondent's expense for repair.
61. The Tribunal is further satisfied that the complainant attempted to return the vehicle to the Respondent. However, the Respondent refused the return of the vehicle at its expense. Due to the 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 Respondent.
62. After considering all the evidence, the Tribunal is satisfied that the Respondent seriously infringed upon the complainant's right to repairs to the vehicle. 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.
63. 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 its own means to ensure such repair. The responsibility remains that of the Respondent to honour the inherent statutory warranty, accept the return of the vehicle, and refund or replace the vehicle as requested by the consumer.
64. The Tribunal wishes to express its utter disappointment in how the Respondent treated the Applicant as a consumer. The Tribunal noted with concern the 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. Therefore, by refusing the repairs in terms of sections 56 (2) and (3), the Respondent's conduct is a clear example of prohibited conduct in terms of the CPA.

FINDING

65. The Tribunal is persuaded that the Applicant has proved a contravention under the CPA. The Respondent displays continuous prohibited conduct by refusing to repair the vehicle, 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.
66. The Tribunal finds that the Respondent retains the risk for any damages to the goods following its refusal to collect or accept the return of the defective goods.
67. Consequently, the Tribunal finds that the Respondent contravened sections 55 (2) and 56 (2), constituting prohibited conduct.
68. The Applicant requested a finding to direct the Respondent to repair the vehicle in line with the diagnostic report issued by Ronnies. However, the Tribunal is not convinced that it is practical to order the Respondent to repair the defects as outlined in the said report. Given the magnitude of repair work poorly done to the vehicle prior to the purchase, the Tribunal is not convinced that it is possible to repair the vehicle to an acceptable safe condition as required in this instance.
69. In the matter of *Coertze and Burger v Young*⁹ it was confirmed that the Tribunal may, in terms of its statutory authority in terms of Section 75 (4) (b) of the CPA, make any applicable order contemplated in the CPA or in Section 150 or 151 of the NCA to provide an "*applicable order*."
70. Accordingly, having found that the Respondent has contravened sections 55(2)(a) to (c) and Section 56(2)(a) of the CPA; and that this conduct constitutes prohibited conduct, the Tribunal finds that the complainant is entitled to a refund of the purchase price. Accordingly, the Tribunal further finds that the Applicant is entitled in law to a full refund of the vehicle's selling price. The Respondent, in turn, is entitled at its cost to recover the vehicle from the Applicant.

Other requested orders

71. The Applicant requested that the Tribunal imposes an administrative fine on the Respondent. The Tribunal is of the view that the Applicant did not place sufficient evidence or argument before the Tribunal to justify a fine.

° NCT/7142/2012/73(3)&75(b)&(2)CPA.

72. The Applicant requested that the Tribunal makes an order interdicting the Respondent from engaging in prohibited conduct in the future. Given the Act's provisions, the interdict will serve no purpose because the Respondent may not engage in prohibited conduct¹⁰.

ORDER

73. Accordingly, the Tribunal makes the following order:

73.1. The Respondent has contravened section 55 (2) (a) to (c) and Section 56 (2) (a) of the CPA;

73.2. The contraventions are declared prohibited conduct in terms of section 150 (a) of the NCA;

73.3. The Respondent is at its own cost to collect the vehicle from the complainant, Mzukisi Zangwa, at an address the Applicant is to provide to the Respondent within five business days after issuing of this judgment;

73.4. The Respondent is ordered to pay R589 900.00 (five hundred and eighty-nine thousand and nine hundred rands), being the purchase price of the vehicle, within 15 business days after issuing of this judgment, to the complainant, Mzukisi Zangwa;

73.5. The Applicant is directed to ensure the execution of the order for re-payment of the purchase price of the vehicle to the complainant, Mzukisi Zangwa; and

73.6. There is no order as to costs.

Dated in Centurion on this 5th day of October 2022

[signed]

Dr MC Peenze
Presiding Tribunal Member



With Adv S Mbhele (Tribunal member) and Ms P Manzi (Tribunal member) concurring.

¹⁰ *Shoprite Investments Ltd v The National Credit Regulator* (509/2017 dated 18 December 2019).