

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

Case Number: NCT/184423/2021/73(2)(b)

In the matter between:

**NATIONAL CONSUMER COMMISSION**

**APPLICANT**

**AND**

**TURNSTONE TRADING 52 (PTY) LTD T/A COUNTRY WIDE TRUCK SALES**

**RESPONDENT**

Coram:

Mr F Sibanda - Presiding Member

Ms P Beck - Tribunal Member

Mr A Potwana - Tribunal Member

Date of hearing - 27 June 2022

Date of judgment - 25 July 2022

---

**JUDGMENT AND REASONS**

---

**THE PARTIES**

1. The Applicant in this matter is the National Consumer Commission (the “Applicant” or the “Commission”), a juristic person and regulatory entity established in terms of section 85 of the Consumer Protection Act, No 68 of 2008 (“the Act” or “the CPA”). The Applicant was represented at the hearing by Mr Emmanuel Mapumlo, a legal advisor in the employ of the Applicant.
2. The Respondent is Turnstone Trading 52 (Pty) Ltd, trading as Country Wide Truck Sales (“the Respondent”), a private company incorporated under the company laws of South Africa with company registration number: 2018/246629/07. The Respondent was represented at the hearing by Mr Hilton West, instructed by De Kock Van Heerden Attorneys.

## BACKGROUND

### The Applicant's case

3. On 13 April 2021, the Applicant filed an application referring a complaint to the National Consumer Tribunal ("the Tribunal") in terms of section 73 (2)(b) of the CPA. The Applicant's founding affidavit in support of the application was deposed to by Thezi Mabuza, the Applicant's Deputy Commissioner and Acting Commissioner ("Mabuza"). Mr Tebogo Hutamo ("the complainant" or "Mr Hutamo") filed a confirmatory affidavit in support of the Applicant's founding affidavit.
4. The Applicant submits that on or about 28 October 2019, the complainant entered into an agreement with the Respondent for the purchase of two 2007 Nissan UD 440 4X6 Tipper Bin and Hydraulic Trucks for an amount of R575 000 each.
5. The complainant noticed that the truck with registration number DPW373MP ("the truck"), which is the subject of this application, had its tipping mechanism not working properly. The complainant returned the truck to the Respondent immediately after discovering the fault and requested a replacement truck, failing which the complainant demanded to be refunded the purchase price of the truck.
6. The Applicant alleges that the Respondent has failed to honour the complainant's directives to date. As a result, the complainant has been unable to use the truck for commercial purposes, as was intended, since the truck remains in the Respondent's possession.
7. The Applicant submits that the complainant does not wish to continue with the agreement with the Respondent. Instead, the complainant persists with his request for a refund.
8. On the strength of the above, the Applicant formed a reasonable suspicion that the Respondent contravened the CPA and directed an inspector, Miehleketo Magagula ("Magagula"), to investigate the complaint. Magagula's investigation report is attached to Mabuza's affidavit.
9. The Applicant alleges that the Respondent contravened the following sections of the CPA:
  - 9.1.1. Section 20(1)(a) and (2)(d); and
  - 9.1.2. Section 56(2)(a).
10. As a result, the Applicant seeks an order:

- 10.1. Declaring the Respondent's contravention of the above-mentioned sections of the CPA to be prohibited conduct;
- 10.2. Interdicting the Respondent from engaging in conduct detailed in paragraph 9 above;
- 10.3. Cancelling the contract entered into between the complainant and the Respondent on 31 October 2019;
- 10.4. Directing the Respondent to refund the complainant the amount of R575 000.00 (Five hundred and seventy-five thousand Rand), being the purchase price of the truck plus interest calculated in accordance with the Prescribed Rate of Interest Act, No 55 of 1975, from the date on which it was paid to the Respondent to date of final payment;
- 10.5. Directing the Respondent to pay an administrative penalty of 10% of the Respondent's annual turnover or R1 000 000.00 (one million Rand); and
- 10.6. Making any other appropriate order contemplated under section 4(2)(b)(ii) of the CPA.

### **Respondent's case**

11. The Respondent's answering affidavit was deposed to by Kim Richard Williams, a director of the Respondent. Mr Deonne Jonker, a former salesperson of the Respondent, deposed to a confirmatory affidavit in support of the Respondent's answering affidavit.
12. The Respondent raised a *point in limine* that the Tribunal has no jurisdiction to deal with the complaint because the Respondent transacted with Mremble Solutions, a company duly registered as such. According to the Respondent, the complainant, Mr Hutamo, has no *locus standi*, since the Respondent concluded a sale agreement with Mremble Solutions. The Respondent believes that at the time of the transaction, Mremble Solutions had an asset value or annual turnover in excess of R2 million. Consequently, the sale and purchase transaction concluded between the Respondent and Mremble Solutions falls outside the scope of the CPA, and thus the Tribunal has no jurisdiction to deal with the matter. As proof that the transaction was with Mremble Solutions, the Respondent attached to its answering affidavit, a release note<sup>1</sup> issued to Mremble Solutions and signed by the complainant, on behalf of Mremble Solutions.
13. The Respondent submits that the complainant returned the truck on 8 November 2019, 8 days after purchase, with specific instructions to the Respondent to do certain minor repairs relating to, inter alia, a tipping valve. The Respondent replaced the tipping valve at its own cost and did not charge for labour.
14. On 11 November 2019, the Respondent contacted the complainant indicating that the truck was ready

---

<sup>1</sup> Annexure D to the Respondent's answering affidavit, page 133 of the bundle.

for collection. On 12 November 2019, the complainant emailed the Respondent purporting to act in his personal capacity, and according to the Respondent, for the first time, indicating that when he returned the vehicle on 8 November 2019, the complainant had asked for a replacement or refund.

15. On 13 November 2019, the Respondent replied to the complainant's email, advising the complainant that the minor faults on the truck had been attended to and that the truck was ready for collection. The Respondent further advised the complainant that the purchase transaction will not be cancelled.
16. The Respondent submits that Mremble Solutions exercised its election in terms of section 56 (2)(a) of the Act, by specifically requesting that the truck should be repaired, an election which Mremble Solutions could not change or alter at a later stage. Whilst the Respondent denies that the truck was unsafe or defective, the so-called defects were in fact, minor as indicated in the job card attached as Annexure 'G'<sup>2</sup>.
17. The Respondent denies that it failed to honour the directive of the complainant. The Respondent further denies that that the truck did not satisfy the purpose for which it was bought. Whilst it is correct that tipping is a special feature for which the truck was purchased, the Respondent submits that the complainant inspected the vehicle before delivery and used it for 8 days and upon return there was no problem with the tipping. An expert report indicates that the truck is able to tip and therefore is not unusable and worthless as alleged by the Applicant.

### **The Applicant's reply**

18. The Applicant's replying affidavit was deposed to by Joseph Selolo, who at the time was the Acting Commissioner in the employ of the Applicant. The complainant deposed to a confirmatory affidavit in support of the Applicant's replying affidavit.
19. The Applicant refutes the allegation of lack of *locus standi* by the complainant. According to the Applicant, Mremble Solutions took a resolution<sup>3</sup>, authorising the complainant to represent the company in purchasing the two trucks, bought on 31 October 2019 from the Respondent. At all material times the Respondent was aware, through its representatives, of the complainant and had been in communication with him.

---

<sup>2</sup> Page 137 of the bundle.

<sup>3</sup> Annexure A to Applicant's replying affidavit (Board Resolution), page 192 of the bundle.

20. Nonetheless, the Applicant submits that should the Tribunal find that the complainant was not duly authorised to lodge a complaint on behalf of Mremble Solutions, the Applicant argues that the complainant is nevertheless a consumer as defined in terms of section 1 of the Act. As such, the complainant is entitled to lodge a complaint on his own, as a person who received the goods, being the truck and is also the user of the goods.
21. The Applicant further submits that the complainant took possession of the truck on 5 November 2019 and not on 31 October 2019, as claimed by the Respondent, despite the release note having been signed on the latter date. Upon collection of the truck, the complainant discovered that the oil tank was falling apart, air pipes were broken, and the truck could not tip. On 8 November 2019, the complainant returned the truck for a replacement or refund and not for repair as alleged by the Respondent. The Applicant alleges that Mr Kim Williamson promised to have the truck replaced by 11 November 2019. This did not happen.
22. Regarding the Respondent's allegation that Mremble Solutions had an asset value or annual turnover in excess of R2 million, the Applicant submits that the company was registered on 15 July 2019 and at the time of the transaction the company had no money and did not own any assets. As such, the Applicant argues that the Respondent's allegation on this point stands to fail for lack of substance.

## THE HEARING

23. At the hearing, the Applicant re-iterated the allegations contained in its founding and replying affidavits. The panel requested the Applicant to clarify who the actual complainant is, given the fact that in its founding papers an impression is given that Mr Hutamo is the complainant and not acting on behalf of Mremble Solutions. The Applicant requested time to respond to the Tribunal. The Tribunal directed that the Respondent should then address the Tribunal and that the Applicant would then be given time to reply to the Respondent's submissions and respond to questions raised by the panel.
24. The Respondent, in its opening remarks, highlighted three issues that require the Tribunal's determination:
  - 24.1. The *locus standi* of the complainant/consumer;
  - 24.2. A dispute of fact as to whether Mr Hutamo sought a refund, a replacement of the truck or a repair of the default; and

- 24.3. If the Tribunal were to find that a refund for the purchase price was sought by Mr Hutamo, the question that arises is whether the defect was of such a nature that would justify a refund, given that it is a minor defect.
25. The Respondent then requested to call two to three witnesses to testify on behalf of the Respondent. The hearing adjourned to allow the Respondent time to arrange and call the witnesses. Upon resumption of the hearing, the Respondent abandoned its request to call witnesses.
26. The Applicant then raised its desire to also call witnesses. The Tribunal requested the Applicant to clarify why the Applicant did not indicate its intention to call witnesses when it outlined its case to the Tribunal and why it was changing the approach to its case after hearing that the Respondent intended calling witnesses. The Applicant indicated that the purpose of calling witnesses to testify on behalf of the Applicant was to provide evidence on the dispute of fact regarding the question of whether the complainant requested a refund/replacement or a repair of the truck. The Applicant subsequently abandoned its intention to call witnesses.
27. In its further address to the Tribunal, the Respondent indicated that in the absence of evidence, and because *locus standi* relates to the litigating party, in this case the Applicant is the NCC, whose *locus standi* is not in dispute, the Respondent would not persist with its point on the *locus standi* of the complainant, Mr Hutamo.
28. The Respondent further accepted that Mremble Solutions, as the proper complainant on paper, would qualify as a consumer, insofar as its turnover is concerned, and is permitted to bring the complaint to the Tribunal.
29. However, the Respondent pointed out that on the third point relating to a dispute of fact, there are two mutually destructive versions. On the Applicant's version, the complainant requested a refund. However, on the Respondent's version, supported by two affidavits<sup>4</sup>, the complainant elected to have the defect repaired. This defect was repaired by the Respondent at a nominal amount of R1 400.00.
30. The Respondent submits that in the absence of *viva voce* evidence, there is no reason to reject the Respondent's version as contained in its papers and on a balance of probabilities the Applicant has not succeeded on this point.

---

<sup>4</sup> Respondent's opposing affidavit, deposed to by Mr Kim Richard Williams, page 118 of the bundle and supporting affidavit deposed to by Mr Deonne Jonker, page 130 of the bundle.

31. When asked on what basis its version should be regarded as the most probable, the Respondent indicated that if the party that bears the onus of proof elects not to call witnesses but to stand and fall by its affidavit, in the face of a conflicting affidavit, the Tribunal must decide on paper where neither version was not tested through evidence/witnesses. The Respondent contends that the scales remain evenly balanced and the party that bears the onus of proof has failed to acquit itself of that onus and thus cannot succeed with its application.
32. The Applicant was given an opportunity to respond to both the Respondent's submissions and the questions posed earlier by the panel. In response to the panel's question of who the complainant is, the Applicant submitted that at the inception of the matter it had the impression that Mr Hutamo was acting in his personal capacity, but later it became clear that Mr Hutamo was acting in a representative capacity, on behalf of Mremble Solutions. Be that as it may, the Applicant submits that both Mr Hutamo and Mremble Solutions qualify as consumers in terms of the CPA. However, Mremble Solutions is the actual consumer in this case, since Mr Hutamo was acting in a representative capacity. Mr Hutamo was duly authorised to act on behalf of Mremble Solutions<sup>5</sup>.
33. Insofar as the relief sought is concerned, the Applicant submits that the Tribunal can make an order based on the facts. The Applicant further argues that on the papers, Mr Hutamo appears as if he is acting on his behalf, as a complainant, the context actually shows that the complainant is Mremble Solutions. As such, the Tribunal should make an order, based on the facts shown, that Mremble Solutions is the consumer, in this instance.
34. On the question of the dispute of facts on whether the complainant elected to have a refund or the truck repaired, the Applicant referred to the email conversation between the complainant and the Respondent where the complainant corroborates what his initial election was, that is, a replacement truck, failing which a refund should be granted<sup>6</sup>. In its reply to the Applicant's email<sup>7</sup>, the Respondent notified the Applicant that it will not cancel the purchase agreement, with no explanation given. The Applicant argues that in the Respondent's replying email, there is no reference to the Applicant having previously requested a repair of the defect. Instead, the Respondent's replying email appears to be a bare refusal of a refund being communicated to the Applicant.
35. In response to a question from the panel that by equal measure there is no reference by the complainant to its previous request for a refund, the Applicant submitted that there was a verbal agreement between the complainant and the Respondent, represented by Mr Kim Williams, that the

<sup>5</sup> Annexure A to Applicant's replying affidavit (Board Resolution), page 192 of the bundle.

<sup>6</sup> Annexure F to the Applicant's founding affidavit (Email communication), page 57 of the bundle.

Applicant's truck will be replaced, failing which the purchase price will be refunded. The Applicant pointed to the email conversation between the complainant and the Respondent as proof of this<sup>8</sup>.

36. Regarding the nature of the defect, which the Respondent described as minor, and therefore not warranting a replacement or refund, the Applicant submitted that section 20 of the CPA deals with the return and cancellation of a transaction which leads to a refund and does not refer to repairs. In terms of section 56 (2)(b), the complainant returned the truck within the stipulated timeframe and elected to have a replacement or refund.
37. Insofar as the gravity of the defect is concerned, the Applicant argues that the complainant purchased the truck specifically for its tipping function. When it was put to duty by the complainant, it failed to perform as expected and that constitutes a defect in terms of section 53 of the CPA. Upon returning the truck, the complainant exercised its right and elected a replacement or refund, since the truck was defective. Therefore, the consumer was within his rights in terms of the CPA.
38. The Applicant further argued that attempting to assess the nature of the defect defeats the purpose of the CPA and limits the rights of the consumer to choose the preferred remedy, as enshrined in the CPA. As such, it is the Applicant's contention that the Tribunal should not limit the consumer's rights by considering whether a defect is worth replacing, refunding or repairing. That choice is for the consumer to make in terms of the CPA.
39. According to the Applicant, the matter of *Motus Corporation (Pty) Ltd and Another v Wentzel*, dealt with section 56 of the CPA only and did not touch on section 20 of the CPA, which does not provide for any other remedy except a cancellation and refund.

#### **APPLICABLE SECTIONS OF THE CPA**

40. Section 20 (2)(d) of the CPA states as follows:  
(2) *"Subject to subsections (3) to (6), the consumer may return goods to the supplier, and receive a full refund of any consideration paid for those goods, if the supplier has delivered –*  
(a)...



*(d) goods intended to satisfy a particular purpose communicated to the supplier as contemplated in section 55(3), and within 10 business days after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose."*

41. In section 53 (1)(a) of the Act, a "defect" is defined as follows:
- (i) *"any material imperfection in the manufacture of the goods or components, or performance of the services, that renders the goods or results of the services 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."*
42. According to section 55(3)
- (3) *"In addition to the right set out in subsection (2)(a), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier –*
    - (a) ordinarily offers to supply such goods; or*
    - (b) acts in a manner consistent with being knowledgeable about the use of those goods, the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated."*
43. Section 56(2) of the CPA states as follows:
- "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 the consumer the price paid by the consumer, for the goods."*

## **CONSIDERATION OF THE FACTS**

### ***Point in limine: Complainant's locus standi***

44. The Respondent raised a *point in limine* that the complainant, Mr Hutamo, has no *locus standi*, since the Respondent concluded a sale agreement with Mremble Solutions. However, during the hearing the Respondent abandoned this point and accepted that both the complainant and Mremble Solutions

qualify as consumers in terms of the CPA, as argued by the Applicant. The Tribunal does not deem it necessary to make a determination on this point given the fact that the Respondent elected not to persist with it.

### **The nature of the defect**

45. The question of what constitutes a defect as defined in section 53 of the CPA was dealt with by the Supreme Court of Appeal (SCA) in *Motus Corporation (Pty) Ltd and Another v Wentzel*<sup>9</sup>. Ms Wentzel brought a case in the Gauteng Division of the High Court, against Motus Corporation (Pty) Ltd, trading as Zambezi Multi Franchise (Renault). Ms Wentzel sought to return a Renault Kwid motor vehicle, against the refund of the purchase price, claiming that Renault had sold her a brand-new car that was 'woefully defective', in breach of sections 49 (1)(b), 55 (2)(b) and (c), 56 (2)(a) and (b) and 56(3) of the CPA. The court found in Ms Wentzel's favour. Renault took the matter on appeal at the SCA.
46. The SCA had to decide, among other things, whether Ms Wentzel made out a case in terms of section 56(2) and (3) of the Act for the refund of the purchase consideration paid to Renault in respect of the vehicle. The court opined that –
- “Not every small fault is a defect as defined. It must either render the goods less acceptable than people generally would be reasonably entitled to expect from goods of that type, or it must render the goods less useful, practicable or safe for the purpose for which they were purchased... Is every rattle or unfamiliar noise a defect in terms of the statute? A defective module may be readily replaced, as occurred with the immobiliser. Does that render the vehicle defective so as to entitle the purchaser to return it and demand repayment of the purchase price? Clearly not.”*
47. In the end, the court found that a consumer is not entitled to a refund of the purchase price unless they satisfy the court that all requirements stipulated in section 56(3) have been met. Ms Wentzel failed to show that the requirements of section 56(3) were satisfied and that she was entitled to return the vehicle against refund of the purchase price of the vehicle. Thus, the SCA upheld the appeal.
48. In the case at hand, the question that arises is whether the faulty tipping valve<sup>10</sup> could be considered a defect within the meaning of section 53 read with section 55 and 56 of the Act, having regard to the nature of the vehicle: being a used 2007 model truck. The Respondent repaired the defect at its own cost of about R1 430.00 and the truck was ready for collection on 11 November 2019, three days after it was returned by the complainant. Considering that the value of the truck was R575 000.00, a defect that

<sup>9</sup> SCA. Case no 1272/2019) [2021] ZASCA 40 (13 April 2021).

<sup>10</sup> Annexure H to Respondent's answering affidavit, page 138 of the bundle.

cost R1 430.00 to repair cannot, in the Tribunal's view, reasonably justify a replacement or refund. It should be expected that a vehicle that is more than ten years old would suffer normal wear and tear. As pointed out by the SCA, not every small fault is a defect as defined.

49. The Applicant also argued that section 20 of the CPA entitles the complainant to a refund only, since that section does not include the option of a repair. However, in terms of section 20 (2)(d), a consumer may return goods to the supplier, and receive a full refund of the purchase price, if the supplier has delivered goods intended to satisfy a particular purpose<sup>11</sup> communicated to the supplier as contemplated in section 55(3), and within 10 business days after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose.
50. The Applicant argues that the complainant bought the truck for purposes of engaging in commercial activity. However, taking guidance from the SCA, a defect must either render the goods less acceptable than people generally would be reasonably entitled to expect from goods of that type, or it must render the goods less useful, practicable or safe for the purpose for which they were purchased.
51. In the view of the Tribunal, a faulty tipping valve, that can be replaced, cannot render the truck unsuitable for the purpose it was bought.
52. Thus, having regard to section 20 of the CPA, there is no evidence pointing out that a malfunctioning tipping valve, which is one component of the truck, rendered the whole truck less useful, practicable or safe for the purpose for which it was purchased, to justify a refund.

#### **Whether the complainant elected to have a replacement/refund or a repair of the truck**

53. There is a dispute of facts on what transpired when the complainant returned the truck to the Respondent on 8 November 2019. On the Applicant's version, the complainant elected to have a replacement truck, failing which he should be refunded the purchase price of the truck. In support of its contention, the Applicant relies on an email sent by the complainant to the Respondent on 12 November 2019<sup>12</sup>. In this email, the complainant states –

*“...I have returned the truck on Friday 08<sup>th</sup> of November for replacement or refund as the consumer protection act section 56 allows me because I'm now loosing (sic) business. I request that you refund me for the Nissan ud440 which cost me R575 000 vat included...”*

---

<sup>11</sup> Own emphasis.

<sup>12</sup> Annexure F to the Applicant's founding affidavit, page 57 of the bundle.

54. When asked why the email does not refer to the complainant's choice made on 8 November 2019 when the truck was returned, the Applicant contends that there was a verbal agreement reached on 8 November 2019, between the complainant and the Respondent regarding the replacement/refund.
55. The Respondent denies that the complainant elected to have the truck replaced or the purchase price refunded nor was there a verbal agreement to that effect reached on 8 November 2019.
56. Given the fact that the Tribunal is not convinced of the Applicant's arguments concerning the nature of the defect and that the truck was not suitable for its intended purpose, it is not necessary to make a finding on the dispute of facts, as this point has become moot. Be that as it may, the Tribunal wishes to emphasise that under such circumstances, where there is a dispute of facts with no further evidence from both parties, save what is contained in their written submissions, the Tribunal would rely on the *Plascon Evans rule*<sup>13</sup>, which as articulated by the honourable judge in *Dwele v Phalatse and Others*<sup>14</sup> states that –

*"In motion proceedings a final order may be granted if those facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. In certain instances, the denial by a respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact. It is bona fide disputes in motion proceedings which fall to be determined on the facts contained in the opposing papers which must be preferred in accordance with the rule in Plascon-Evans Paints Ltd v. Van Riebeeck Paints (Pty) Ltd".*

57. Similarly, the SCA in *Zuma v National Director of Public Prosecutions*<sup>15</sup> stated that –

*"Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the*

<sup>13</sup> *Plascon-Evans Paints Ltd. v Van Riebeck Paints (Pty) Ltd.* [1984]. ZASCA 51 1984 (3) SA 623 (A) at 634E to 635C.

<sup>14</sup> *Dwele v Phalatse and Others* (11112/15) [2017] ZAGPJHC 146 (7 June 2017).

<sup>15</sup> *Zuma v National Director of Public Prosecutions* 2008 (2) SACR 421 (CC) para 8-10.

*court is justified in rejecting them merely on the papers.<sup>16</sup> The court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP's version.<sup>17</sup>*

## CONCLUSION

58. Having considered the submissions made by the parties, the Tribunal finds that the nature of the defect complained about does not warrant a replacement of the truck or a refund of the purchase price, as it does not render the truck unsuitable for its intended purpose. Having made this finding, the Tribunal does not deem it necessary to pronounce on whether the complainant elected to have a refund, replacement or the truck repaired.
59. Consequently, the Tribunal is inclined to refuse the Applicant's application.

## ORDER

60. Therefore, the Tribunal makes the following order--
- 60.1. The Applicant's application is dismissed; and
- 60.2. There is no order as to costs.

DATED at CENTURION on the 25<sup>th</sup> day of July 2022.

(signed)

**Mr F Sibanda**

Presiding Tribunal Member

Ms P Beck (Tribunal Member) and Mr A Potwana (Tribunal Member) concurring.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

Ground Floor, Building B

Lakefield Office Park

272 West Avenue, Centurion, 0157

[www.thenct.org.za](http://www.thenct.org.za)

national consumer tribunal

<sup>16</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) 634-5; *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) para 55; *Thint (Pty) Ltd v National Director of Public Prosecutions*; *Zuma v National Director of Public Prosecutions* 2008 (2) SACR 421 (CC) para 8-10.

<sup>17</sup> *Sewmungal NNO v Regent Cinema* 1977 (1) SA 814 (N); *Trust Bank van Afrika Bpk v Western Bank Bpk NNO* 1978 (4) SA 281 (A).