

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

Case Number: NCT/185827/2021/73(2)(b)

In the matter between:

NATIONAL CONSUMER COMMISSION

APPLICANT

AND

DONVOL (PTY) LTD T/A LAND ROVER STELLENBOSCH

RESPONDENT

Coram:

Ms H Alwar - Presiding Tribunal member

Date of adjudication in chambers – 28 March 2022

Date of judgment – 3 April 2022

REFUSAL OF CONSENT ORDER

APPLICANT

1. The Applicant is the **National Consumer Commission** (“the NCC” or “the Applicant”), an organ of 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.

RESPONDENT

2. The Respondent is **Donvol (Pty) Ltd trading as Land Rover Stellenbosch** (referred to as the Respondent).

APPLICATION TYPE

3. The Applicant initially filed an application in terms of Section 73(2)(b) of the Act. The matter was set down to be heard on 29 October 2021. The parties requested that the matter be removed from the roll to finalise a settlement. This is an application in terms of section 74(1) of the Act for the Tribunal to confirm a settlement agreement as a consent order.
4. The Applicant has submitted a Settlement Agreement that the parties wish to be confirmed as a consent order (the settlement agreement). A settlement agreement is in terms of Section 74(1) of the Act. A reference to a section in this consent order refers to a section in the Act.

BACKGROUND

5. The application arises out of a complaint received by the Applicant. The Applicant conducted an investigation into the matter.
6. The settlement agreement records that the Respondent will carry out various remedial steps.

ANALYSIS

7. In confirming a consent agreement as an order of the Tribunal, the Tribunal needs to ensure that the order can be enforced. The Tribunal issued a directive to the parties and required the following amendments to be made to the consent order so that the order could be confirmed as an order of the Tribunal:-
 - 7.1. State the sections of the Act that the Respondent has contravened and the nature of the prohibited conduct;
 - 7.2. Admission by the Respondent regarding the contraventions of the Act;
 - 7.3. A statement that the settlement agreement is made an order of the Tribunal in terms of Section 74(1) of the Act;

- 7.4. Provide proof of authority of the person signing the settlement agreement on behalf of the Applicant and Respondent; and
- 7.5. Provide the full name and surname of the person authorised to sign the settlement agreement on behalf of the Applicant and Respondent.
8. The parties were required to provide file an amended settlement agreement by 14 March 2022. On 14 March 2022, the parties filed an amended settlement agreement, which addressed the issues raised in paragraphs 7.3 -7.5 supra.
9. The Respondent submitted that par 7.1 and 7.2 above, could not be complied with, as the Respondent denies that it contravened the CPA. According to the Respondent, the cost of a hearing would outweigh the cost of repairing the complainant's motor vehicle and therefore it agreed to the settlement agreement.
10. The Respondent submitted that Section 74 of the CPA does not require an admission of contravention of the CPA in order for the Tribunal to confirm a settlement agreement as an order of the Tribunal.

THE LAW

11. Section 74 of the CPA states-

“ (1) If a matter has been investigated by the Commission, and the Commission and the respondent agree to the proposed terms of an appropriate order, the Tribunal or a court, without hearing any evidence, may confirm that agreement as a consent order.

(2) After hearing a motion for a consent order, the Tribunal or a court must— (a) make an order as agreed to and proposed by the Commission and the respondent; (b) indicate any changes that must be made in the draft order before it will make the order; or (c) refuse to make the order.

(3) With the consent of a complainant, a consent order confirmed in terms of subsection (1) may include an award of damages to the complainant.”

12. The Tribunal is a creature of statute. It can only exercise the powers conferred by the Act. Section 150(d) of the Act states:

***“Orders of Tribunal.**—In addition to its other powers in terms of this Act, the Tribunal may make an appropriate order in relation to prohibited conduct or required conduct in terms of this Act, or the Consumer Protection Act, 2008, including—*

(d) confirming a consent agreement in terms of this Act or the Consumer Protection Act, 2008, as an order of the Tribunal;”

ANALYSIS OF THE EVIDENCE

13. The Respondent denies that it contravened the CPA. However, the wording of section 150 makes it clear that the Tribunal’s power to confirm a consent order flows from a finding of prohibited conduct or required conduct. In the absence of an admission of prohibited or required conduct, the Tribunal cannot exercise those powers. The Tribunal has consistently applied this approach in numerous matters before it. A settlement agreement must always contain an admission of prohibited conduct before the Tribunal considers confirming it as an order. The same principle applies to a consent order application. Nothing prevents the parties from entering into an inter-party settlement.

14. CONCLUSION

The Tribunal finds that it cannot confirm a settlement agreement that does not contain an admission of contravention of the CPA.

ORDER

15. Accordingly, the Tribunal makes the following order:

- 15.1. The Settlement Agreement that the Applicant and the Respondent concluded on 30 November 2021; which is annexed to this order as Annexure A to NCC v Donvol (Pty) Ltd NCT/185827/2021/73(2)(b), is hereby refused; and
- 15.2. There is no order as to costs.

DATED ON THIS 3RD DAY OF APRIL 2022

MS H ALWAR
PRESIDING MEMBER

Authorised for issue by The National Consumer Tribunal

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