

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

Case number: NCT/240235/2022/73(2)(b)

In the matter between:

NATIONAL CONSUMER COMMISSION

APPLICANT

and

**UNICITY TRADING (PTY) LTD
TRADING AS CAPE SUV**

RESPONDENT

Coram:

Dr A Potwana – Presiding Tribunal member

Dr M Peenze – Tribunal member

Mr C Ntsoane – Tribunal member

Date of hearing – 23 May 2023 via the Microsoft Teams digital platform.

POSTPONEMENT RULING

APPLICANT

1. The applicant is the National Consumer Commission, a juristic person established in terms of section 85 of the Consumer Protection Act 68 of 2008 (the CPA).
2. On the day of the hearing, Mr Jabulani Mbeje (Mr Mbeje), the applicant's head of its Legal Services Division, represented the applicant.

RESPONDENT

3. The respondent is Unicity Trading (Pty) Ltd, a private company trading as Cape Suv.
4. On the day of the hearing, Mr Werner Welgemoed (Mr Welgemoed) of Welgemoed Attorneys represented the respondent.

5. Mr Gert Gagiano (Mr Gagiano), an advocate of the Cape Bar Society of Advocates, instructed by Trudie Broekmann Attorneys, appeared on behalf of the complainant.

BACKGROUND

6. On 2 September 2023, the applicant filed Form Tl.r30A and Form Tl.73(2)(b) CPA with the Tribunal's Registrar (Registrar). The documents were served on the respondent and the complainant electronically by consent. The details of the applicant's application are contained in the affidavit of the applicant's Acting Commissioner, Ms Thezi Mabuza (Ms Mabuza). According to Ms Mabuza, the applicant received a complaint from Alison Janet Davidson, the complainant. The complainant alleged that she purchased a 2013 Daihatsu Terios 4x4 motor vehicle (the motor vehicle) from the respondent on 22 June 2019. Within a week of taking delivery of the motor vehicle, defects manifested. The respondent attempted to repair the motor vehicle several times on 24 and 25 June 2019, 7 August 2019, and between 17 to 31 August 2019. On 1 September 2019, a defect or failure in the gearbox was detected. On 4 September 2019, within three months after it had been repaired in August 2019, the vehicle broke down again due to gearbox failure. On 10 September 2019, the complainant, through its attorneys of record at that time, cancelled the agreement of sale, tendered the return of the vehicle, and claimed the refund of the purchase price less R5000.00 to repair a dent caused by the complainant. Despite such demand, the respondent has not accepted the cancellation of the agreement and refund of the purchase price but blamed the complainant as the cause of the gearbox failure. Based on the above allegations, the applicant formed a reasonable suspicion that the respondent committed contraventions of the CPA and directed an inspector to investigate the complaint. Subsequently, the applicant referred the complaint to the Tribunal.
7. In "*Part D: Order sought from the Tribunal*" of Form Tl.73(2)(b) CPA, the applicant stated that it was applying for orders in the following terms:
 - 7.1. The respondent's contravention of section 56(3)(b) of the CPA is declared prohibited conduct.
 - 7.2. That the respondent be interdicted from engaging in conduct detailed in paragraph 7.1 above.
 - 7.3. Directing the respondent to refund to the complainant the purchase price paid by the complainant for the motor vehicle.
 - 7.4. Alternatively, to 7.3 above, the respondent is ordered to replace the motor vehicle with a similar vehicle of the same value.

- 7.5. Directing the respondent to pay amounts mentioned in paragraph 7.3 above or replace the motor vehicle as per paragraph 7.4 above within 15 days of the date of judgment.
 - 7.6. Directing the respondent to pay an administrative penalty into the National Revenue Fund referred to in section 213 of the Constitution of the Republic of South Africa in the amount of R100 000.00 (One Hundred Thousand Rands).
 - 7.7. Any other appropriate order contemplated in section 4(2)(b)(ii) of the CPA.
8. On 8 November 2022, the respondent's attorneys, Welgemoed Attorneys, filed an application for condonation for the late filing of the respondent's answering affidavit. The Tribunal granted the application in a ruling issued on 31 March 2023.
 9. On 26 April 2023, the Deputy Registrar issued a notice of set down for the matter to be heard on 23 May 2023.

REQUEST FOR A POSTPONEMENT

10. On the day of the hearing, Mr Gagiano informed the panel that the complainant had filed an application to intervene. He requested that the hearing be postponed. He submitted that the purpose of the intervention application is to ensure that the complainant's rights are protected.
11. Neither Mr Mbeje nor Mr Welgemoed opposed the request. The latter, however, enquired about the costs.

THE LAW

12. Section 147 of the National Credit Act 34 of 2005 states-
 - “(1) Subject to subsection (2), each party participating in a hearing must bear its own costs
 - (2) If the Tribunal-
 - (a) has not made a finding against a respondent, the member of the Tribunal presiding at a hearing may award costs to the respondent and against a complainant who referred the complaint in terms of section 141(1); or
 - (b) has made a finding against a respondent, the member of the Tribunal presiding at a hearing may award costs against the respondent and to a complainant who referred the complaint in terms of section 141(1).”
13. Rule 12 of the Tribunal Rules provides for the making and granting of intervention applications.

CONSIDERATION OF THE REQUEST FOR AND CONCLUSION

14. The complainant has a direct and substantial interest in the matter and should be afforded an opportunity to make representations. The interests of justice favour the granting of the request for the hearing to be postponed. Accordingly, the presiding Tribunal member granted the request for the hearing to be postponed ex tempore.

ORDER

15. Accordingly, for the reasons set out above, the Tribunal makes the following order:
- 15.1. The hearing of the matter is adjourned sine die; and
 - 15.2. There is no order as to costs.

Done and dated 30 May 2023.

[Signed]

Dr A Potwana
Presiding Tribunal member

Dr M Peenze and Mr C Ntsoane (Tribunal members) concur.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

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