

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

Case No: **NCT/343048/2024/73(2)(b)**

In the matter between:

NATIONAL CONSUMER COMMISSION

APPLICANT

and

ALAN HYDE T/A PLETT MOTOR SERVICES

RESPONDENT

Coram:

Mr S Hockey	- Presiding Tribunal member
Dr M Peenze	- Tribunal member
Mr S Mbhele	- Tribunal member

Date of the hearing: - 17 January 2025

Date of judgment: - 20 January 2025

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is the National Consumer Commission (the NCC), a state organ established under section 85(1) of the Consumer Protection Act, 2008 (the CPA). At the hearing, the applicant was represented by Ms Imran Magoro, a legal advisor employed by the NCC.
2. The respondent is Alan Hyde, an adult male businessman trading as Plett Motor Services. For present purposes, the respondent is a supplier in terms of section

1 of the CPA. The respondent did not appear at the hearing of this matter.

TERMINOLOGY

3. A reference to a section in this ruling refers to a section of the CPA, and a reference to a rule refers to the Rules of the National Consumer Tribunal (the Rules)¹.

APPLICATION TYPE AND JURISDICTION

4. This is an application in terms of section 73(2)(b). This section authorises the NCC to refer a matter to the National Consumer Tribunal (the Tribunal) after the conclusion of an investigation of a complaint it received from a consumer if it believes that a person has engaged in prohibited conduct².
5. On 26 April 2022, the NCC received a complaint from Mr Andries Jacobus van Schalkwyk (the complainant). The complaint involved alleged contraventions of provisions of the CPA, which the NCC subsequently investigated. The resultant investigation report revealed that the respondent allegedly contravened the CPA, as discussed below.
6. Accordingly, the Tribunal has jurisdiction in terms of section 73(2)(b) and section 27(a)(ii)³ of the National Credit Act 34 of 2005 (the NCA).

HEARING OF THE MATTER ON AN UNOPPOSED BASIS

7. The NCC filed this application and served it on the respondent on 13 August 2024. The application was served personally on the respondent on 8 August

¹ GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007 (Government Gazette No. 30225).

² Prohibited conduct is defined in section 1 as an act or omission in contravention of the CPA.

³ This section provides that the Tribunal or a member of the Tribunal acting alone in accordance with the NCA or the CPA may adjudicate in relation to any allegations of prohibited conduct.

2024 at his business address by the sheriff of the high court.

8. In terms of rules 13(1) and (2), a respondent to an application or referral to the Tribunal may oppose the matter by filing an answering affidavit within 15 business days of receipt of the application or referral.
9. The respondent failed to file an answering affidavit within the prescribed period or at all, and the matter was accordingly set down for hearing on an unopposed basis.
10. In terms of rule 13(5), any fact or allegation in an application or referral not specifically denied or admitted in an answering affidavit will be deemed to have been admitted. Since no answering affidavit has been filed, the allegations by the NCC must be deemed to have been admitted by the respondent.

BACKGROUND

11. On 2 November 2021, the complainant purchased a Volkswagen Beach Buggy (the vehicle) from the respondent for R70 000.00. The complainant's son collected the vehicle from the respondent's premises on 3 November 2021.
12. On the same day the vehicle was collected, the complainant's son experienced several issues with it. On 5 November 2021, the vehicle was returned to the respondent for repairs.
13. On 8 November 2021, the complainant again collected the vehicle from the respondent. However, the vehicle again broke down and was not in a good state after the repairs. The investigation report records that the vehicle stalled several times while the complainant was driving it home.
14. On 10 November 2021, the respondent was notified about the complainant's predicament regarding the vehicle and agreed to return it for further repairs. The complainant, however, expressed his intention to cancel the purchase of the

vehicle and requested a refund of its purchase price. The respondent refused his request in this regard.

15. It appears that the vehicle was returned to the respondent, as on 21 November 2021, the complainant had the vehicle inspected at the respondent's premises. A list of the faults on the vehicle was compiled, namely:

- 15.1. On low revs, the engine light started to flicker.
- 15.2. There were lots of play on the steering wheel.
- 15.3. There was a shudder on the clutch.
- 15.4. There were oil leaks.
- 15.5. The breather pipe between the engine and filter on the carburettor was missing.
- 15.6. The handbrake was not working.
- 15.7. There was a problem with the brake binding.
- 15.8. The seats could not move at all.
- 15.9. The number plate light was not working.
- 15.10. The oil was overfilled in the engine.
- 15.11. The gear lever was exposed at the rear seat, which was hazardous for rear seat passengers.
- 15.12. The foot pedal rubbers were missing.
- 15.13. The accelerator cable was not in a sleeve.
- 15.14. The oil pressure gauge sending unit was removed; therefore, the oil pressure gauge was not working.

16. On 21 November 2021, the complainant again communicated that he wanted the sale cancelled and demanded that the purchase price be refunded.

17. Because the respondent refused to refund the complainant, the latter referred his complaint to the Motor Industry Ombudsman of South Africa, who later advised that there was no reasonable probability that the matter would be resolved through mediation as the respondent was unresponsive.

18. When the investigator whom the NCC appointed to investigate this matter contacted the respondent, he averred that he was not liable because the complainant knowingly purchased an old vehicle. The respondent also responded to queries from the investigator stating that the complainant had damaged the vehicle, which had been delivered to him 100% but had been returned with a blown engine. He alleged that the complainant damaged the vehicle by over-revving it.

RELEVANT LEGAL CONSIDERATIONS

19. The NCC alleges that the respondent contravened section 55(2)(a) to (c) read with section 56(2).
20. Section 55(2)(a) to (c) reads as follows:

“Except to the extent contemplated in subsection (6)⁴, 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”.

21. In terms of section 56(2), within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty

⁴ Subsection (6) excludes subsection 2(a) and (b) to a transaction if the consumer has been expressly informed that particular goods were offered in a specific condition and has expressly agreed to accept the goods in that condition or knowingly acted in a manner consistent with accepting the goods in that condition.

and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in sections 55, and the supplier must, at the direction of the consumer, either repair or replace the failed, unsafe or defective goods or refund to the consumer the price paid by the consumer for the goods.

22. Regard must also be had to section 53, where the concept of a "defect" is defined. Section 53(1)(a) defines defect when used with respect to any goods, component of any goods or service, as –

“(i) any material imperfection in the manufacture of goods or component, 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.”

DISCUSSION

23. The Tribunal is mindful of what was said by the Supreme Court of Appeal in *Motus Corporation (Pty) Ltd v Wentzel*⁵ (Motus), namely:

“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.”

24. Since the purchase of the vehicle, the complainant has had persistent problems despite the applicant's attempts to fix these. The vehicle stalled when the

⁵ [2021] ZACSA 40; [2021] 3 All SA 98 (SCA) (13 April 2021).

complainant drove it home after it was supposedly repaired. The respondent's own diagnosis is that the vehicle's engine blew, and he wrongly accuses the complainant of being the cause of this.

25. There can be no doubt that a blown engine is a defect, as defined in section 53 and under these circumstances, the complainant is entitled to the relief in section 56(2). He has elected a refund, and the Tribunal holds that an order to this effect is appropriate.
26. The respondent's refusal to refund the complainant the purchase price for the vehicle contravenes his obligations in section 56(2) which is prohibited conduct. The Tribunal is of the view that an order to this effect is appropriate.
27. The evidence on record indicates that the vehicle has already been returned to the respondent.
28. As for the NCC's request that an administrative fine be imposed on the respondent, the Tribunal notes that such a fine is at its discretion in terms of section 151 of the National Credit Act 34 of 2005. The Tribunal considers that the contravention by the respondent, as discussed above, is a once-off contravention and that the respondent seems to be conducting a small business as a sole proprietor. In the circumstances of the matter, the Tribunal is of the view that the imposition of an administrative fine is not appropriate.

THE ORDER

29. In the result, the following order is made:
 - 29.1. The respondent contravened section 56(2), and such contravention is declared to be prohibited conduct.
 - 29.2. The respondent shall refund the complainant the purchase price of the vehicle in the sum of R70 000.00 into a bank account as

instructed by the complainant within ten business days of the issuance of this order.

29.3. There is no order as to costs.

Mr S Hockey

(Presiding Tribunal member)

Tribunal members Dr M Peenze and Mr S Mbhele concur.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

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