

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

**Case Number: NCT/373868/2025/73(2)(b)**

In the matter between:

**NATIONAL CONSUMER COMMISSION**

**APPLICANT**

and

**CAPE TOWN MOTOR REPAIRS (PTY) LTD**

**RESPONDENT**

*Coram:*

Adv C Sassman - Presiding Tribunal member

Mr C Ntsoane - Tribunal member

Dr A Potwana - Tribunal member

Date of Hearing - 25 March 2025

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**JUDGMENT AND REASONS**

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**THE PARTIES**

1. The applicant is the National Consumer Commission (the applicant or the NCC), a state organ established in terms of section 85(1) of the Consumer Protection Act, 68 of 2008 (the CPA). At the hearing, Ms Imrhan Magoro (Ms Magoro), a legal advisor employed by the applicant, represented the applicant.
2. The respondent is Cape Town Motor Repairs (Pty) Ltd, a supplier as defined in section 1 of the CPA. The respondent was not represented at the hearing.

**TYPE OF APPLICATION AND JURISDICTION**

3. This is an application under section 73 (2) (b) of the CPA. This section authorises the applicant to refer a matter to the National Consumer Tribunal (the Tribunal) if it believes a person has engaged in prohibited conduct.

4. The Tribunal's jurisdiction to adjudicate allegations of prohibited conduct is found under section 27(a)(ii) of the National Credit Act, 34 of 2005 (NCA).

### **HEARING OF THE APPLICATION ON A DEFAULT BASIS**

5. Rule 30(1)(b) of the Tribunal Rules provides that a document may be served on a party by delivering it to the party. The application documents were served on the respondent by the Sheriff Cape Town North on 24 January 2025.

6. Rule 24(1) and 2) of the Tribunal Rules states –

- “(1) If a party to a matter fails to attend or be represented at any hearing or any proceedings, and that party -
  - (a) is the applicant, the presiding member may dismiss the matter by issuing a written ruling; or
  - (b) is not the applicant, the presiding member may -
    - (i) continue with the proceedings in the absence of that party; or
    - (ii) adjourn the hearing to a later date.
- (2) The Presiding member must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule (1).”

7. On the day of the hearing, the presiding Tribunal member was satisfied that the respondent had been properly notified of the proceedings' date, time, and venue, and the hearing proceeded in the respondent's absence.

8. Rule 25(3) of the Tribunal Rules states-

- “The Tribunal may make a default order-
  - (a) After it has considered or heard any necessary evidence, and
  - (b) If it is satisfied that the application documents were adequately served.”

### **MATTER TO BE DECIDED**

9. The Tribunal is required to determine whether the respondent contravened the provisions of the CPA as alleged by the applicant and whether the orders sought by it should be granted.

### **INTRODUCTION**

10. On 29 January 2025, the applicant referred a matter to the Tribunal in terms of section 73(2)(b) of the CPA, alleging that the respondent contravened several provisions of the CPA. In “Part D: Order

sought from the Tribunal” of the prescribed form for referring matters to the Tribunal, Form T1.73(2)(b) CPA, the applicant stated that it seeks an order in the following terms:

- 10.1. Declaring that the respondent’s contravention of section 54(1)(a) and (d) read with section 19(2)(a)(i) of the CPA is prohibited conduct.
- 10.2. Directing the respondent to return the motor vehicle to the complainant in the same condition it was when it was collected from the complainant.
- 10.3. Directing the respondent to refund the complainant R77 000.00 paid as a deposit for repairs, together with interest thereon, in accordance with the Prescribed Rate of Interest Act No. 55 of 1975, calculated from the date of payment to the date of final payment.
- 10.4. Directing the respondent to pay an administrative penalty of R1 000 000.00 (one million rands).
- 10.5. Any other appropriate order contemplated in section 4(2)(b)(ii) of the CPA.

## **FACTS**

11. Mbulelo Tongo (the complainant) filed a complaint with the applicant alleging that on 31 January 2023, following a collision, he requested a quotation for repairs to his motor vehicle (the vehicle) from Judge Kruger. The respondent issued a quote for R124 900.17, which was forwarded to the complainant’s insurer. Before the finalisation of the insurance claim, the respondent agreed that the complainant would make an upfront payment of R60,000.00. The parties agreed that the balance would be paid in instalments after the completion of the repairs. The respondent indicated it would take four to six weeks to complete the repairs. The repairs were thus expected to be completed on or before 24 April 2023. On 11 April 2023, the complainant deposited R60 000.00 into the respondent’s bank account.
12. On 26 April 2023, the respondent informed the complainant that the necessary parts, except for the windscreen, rim, and tyres, had been obtained. In addition, the respondent mentioned that the right front suspension was completely damaged and needed to be replaced and that an additional R10,000.00 to R15,000.00 was required. On 4 May 2023, the respondent advised the complainant that the mechanical repairs were completed, only three brackets were needed to replace the damaged ones and a test drive to ensure the vehicle’s safety was outstanding.
13. On 8 May 2023, the complainant deposited R10,000.00 into the respondent’s bank account. On 22 June 2023, the complainant deposited an additional R7 000.00 into the respondent’s bank

account for the dashboard repairs because the respondent claimed that this was the reason for the delay in completing the repairs.

14. Despite promising that the repairs would be completed by 6 July 2023, the respondent failed to perform as promised. Consequently, the complainant requested the respondent to return the vehicle so that he could have it repaired elsewhere.

## THE LAW

15. Section 4(2)(b)(ii) of the CPA states –

“In any matter brought before the Tribunal or a court in terms of this Act the Tribunal or court, as the case may be, must make appropriate orders to give practical effect to the consumer’s right of access to redress, including, but not limited to –

- (aa) any order provided for in this Act; and
- (bb) any innovative order that better advances, protects, promotes and assures the realisation by consumers of their rights in terms of this Act.”

16. Section 19(2)(a)(i) of the CPA states –

“Unless otherwise expressly provided or anticipated in an agreement, it is an implied condition of every transaction for the supply of goods or services that the supplier is responsible to deliver the goods or perform the services on the agreed date and at the agreed time, if any, or otherwise within a reasonable time after concluding the transaction or agreement.”

17. Section 54(1)(a) and (d) of the CPA states –

“When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to—

- (a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;
- (b) ...
- (c) ...; and
- (d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services, having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services..”

18. Section 150(i) of the NCA states –

“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 any other appropriate order required to give effect to a right, as contemplated in this Act or the Consumer Protection Act, 2008.”

19. Rule 13(5) of the Tribunal Rules states, “Any fact or allegation in the application or referral not specifically denied or admitted in an answering affidavit, will be deemed to have been admitted.”

## **ASSESSMENT OF THE EVIDENCE**

20. In accordance with rule 13(5) of the Tribunal Rules, any fact or allegation in the application or referral not specifically denied or admitted in the respondent’s answering affidavit will be deemed to have been admitted.
21. The uncontroverted evidence before the Tribunal is that on 9 March 2023, the respondent and the complainant agreed that the respondent would complete the repairs to the complainant’s vehicle within four to six weeks and that the complainant would make an upfront payment of R60,000.00. The balance would be paid in instalments after the completion of the repairs. According to the applicant, the respondent was supposed to have completed the repairs by 24 April 2023.
22. It is unclear, however, what the complainant and the respondent meant by an upfront payment and whether the completion date of 24 April 2023 was conditional upon the complainant paying the R60,000.00. According to the South African Concise Oxford Dictionary, an “upfront” payment means a payment made in advance.<sup>1</sup> If the complainant was supposed to pay the R60,000.00 in advance before the commencement of the repairs, the respondent ought to have completed the repairs by no later than the 24th day of May 2023 since the complainant paid the R60,000.00 on 11 April 2023. If, on the other hand, the respondent was supposed to complete the repairs within six weeks after taking possession of the vehicle on 9 March 2023 and before the payment of the R60,000.00 by the complainant, the respondent was supposed to complete the repairs by no later than 21 April 2023. Thus, on either meaning that the complainant and the respondent attributed to an upfront payment, the respondent failed to complete the repairs within the agreed four to six weeks as it had not completed the repairs even on the later date, 24 May 2023. In addition, according to the applicant, the respondent had still not completed the repairs by 6 July 2023.

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<sup>1</sup> Kavanagh, K and others (eds) *South African Concise Oxford Dictionary* 10 ed (2009) 1293.

23. The provisions of sections 54(1)(a) and 19(2)(a) are unambiguous. They impose an obligation on suppliers to perform and complete services timely and to notify consumers timely of unavoidable delays in the performance of services. In the present matter, it is evident that the respondent failed to complete the repairs within the agreed four to six weeks. According to the applicant, the excuses from the Respondent continued indefinitely, leading the complainant to realise that he was being misled.

24. In view of the above, we are satisfied that the applicant has proved, on a balance of probabilities, that the respondent contravened section 54(1)(a) of the CPA. Section 54(2) of the CPA states –

“If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either—

- (a) remedy any defect in the quality of the services performed or goods supplied; or
- (b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.”

In these proceedings, however, the applicant does not want the respondent to remedy the defect in the quality of the services performed by the respondent. Instead, the complainant requested the respondent to return the vehicle so that he could have it repaired elsewhere. Moreover, there is no evidence before the Tribunal that the respondent did, in fact, make any repairs. In the circumstances, the Tribunal is constrained in ordering the relief prescribed under section 54(2). In these circumstances, the Tribunal will consider making an appropriate order required to give effect to a right contemplated in the CPA as prescribed under section 150(i) of the NCA. In this matter, the complainant’s rights include the right to the return of his vehicle in at least as good a condition as it was when the complainant made it available to the respondent for repairs.<sup>2</sup>

25. Concerning sections 19(2) of the CPA, as the agreement between the complainant and the respondent expressly provided that the repairs had to be completed within four to six weeks, the provisions of section 19(2) are not applicable. In addition, because the respondent did not return the vehicle to the complainant, there is no basis to conclude that the respondent contravened section 54(1)(d) of the CPA.

## ADMINISTRATIVE FINE

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<sup>2</sup> Prescribed under section 54(1)(d) of the CPA.

26. The NCC wants an administrative fine imposed on the respondent. In terms of section 112(1) of the CPA, an administrative fine may be imposed in respect of prohibited or required conduct in terms of the CPA. Such a fine may not exceed the greater of 10% of the respondent's annual turnover during the preceding financial year or R1 000 000.00.<sup>3</sup>
27. Section 112(3) of the CPA outlines the factors the Tribunal must consider when determining an appropriate fine. The Tribunal deals with each of these factors under the sub-headings below.

27.1. The nature, duration, gravity and extent of the contravention

The applicant alleges that the respondent's conduct is serious because it disregarded various provisions of the CPA and has shown a blatant disregard for them.

27.2. Any loss or damage suffered as a result of the contravention

The applicant submits that the complainant paid R77,000.00 to the respondent, but the respondent refused to return the vehicle to the complainant.

27.3. The behaviour of the respondent

The applicant alleges that throughout the history of this matter, the respondent has shown no regard for consumer rights enshrined in the CPA. It had to conduct an investigation at a cost to the taxpayers, and its investigator had to travel to Cape Town to conduct the investigation.

27.4. The level of profit derived from the contravention

The respondent benefitted from the R77,000.00 the complainant paid to the respondent.

27.5. The degree to which the respondent cooperated with the NCC and the Tribunal

The respondent refused to cooperate with the NCC, which compelled the NCC to issue a summons. Despite the summons, the respondent still refused to cooperate with the NCC.

27.6. Whether the respondent has previously been found in contravention of the CPA

There is no evidence that the respondent previously contravened the provisions of the CPA.

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<sup>3</sup> Section 151(2).

28. It is evident that the respondent's conduct has had a negative impact on the complainant, whose vehicle has been in the respondent's possession for almost two years. The complainant paid a lot of money for the repairs but has been treated dishonestly and contemptuously by the respondent. Such conduct must be condemned in the strongest possible terms. The Tribunal must send out a strong message that undermining the rights of consumers enshrined in the CPA and refusing to cooperate with the NCC will not go unpunished. Such conduct must be visited with significant penalties that will, hopefully, deter the respondent and other suppliers from abusing consumers and committing prohibited conduct.
29. Based on a conspectus of all the evidence presented to us and having considered the applicant's submissions on all the factors prescribed in section 112(3) of the CPA, the Tribunal finds that an administrative fine of R100 000.00 (one hundred thousand rands) is appropriate.

## **ORDER**

30. The Tribunal makes the following order:
- 30.1. The respondent contravened section 54(1)(a) of the CPA.
- 30.2. The respondent's contravention of section 54(1)(a) of the CPA is declared prohibited conduct.
- 30.3. The respondent must return the vehicle to the complainant in the same condition it was when it was collected from the complainant.
- 30.4. The respondent must refund the complainant R77 000.00 (seventy-seven thousand rands) within seven days of the issuing of this judgment.
- 30.5. The respondent must pay an administrative fine of R100 000.00 (one hundred thousand rands) within 60 business days from the date of the issuance of this order into the bank account of the National Revenue Fund, the details of which are as follows:

Bank:	Nedbank
Account Holder:	Department of Trade, Industry and Competition
Account type:	Current Account
Branch Name:	Telecoms and Fiscal
Branch code:	198765

Account number: 126 884 7941

Reference: NCT/373868/2025/73(2)(b) and the name of the person or entity making the payment.

30.6. No order as to costs.

Thus, done and dated 26 March 2025.

[Signed]

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Dr A Potwana  
Tribunal member

Adv C Sassman, presiding Tribunal member, and Mr C J Ntsoane, Tribunal member, concur.

**Authorised for issue by The National Consumer Tribunal**

**National Consumer Tribunal**

**Ground Floor, Building B**

**Lakefield Office Park**

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