IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION

Case No: **NCT/388029/2025/73(2)(b)**

In the matter between:

NATIONAL CONSUMER COMMISSION **APPLICANT**

and

ECONOCOM 357 (PTY) LTD T/A LEATHER GALLERY **RESPONDENT**

Coram:

Ms Z Ntuli - Presiding Tribunal member
Dr M Peenze - Tribunal member
Mr S Hockey - Tribunal member

Date of the hearing: - 5 June 2025
Date of judgment: - 8 June 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 Ntsako Ngobeni, a legal advisor employed by the NCC.

2. The respondent is Econocom 357 (Pty) Ltd, a company incorporated under the company laws of South Africa and a supplier as defined in section 1 of the CPA. After the hearing had commenced, Ms Judy Snyman, the respondent's Human Resources manager, joined the proceedings to request a postponement, which was refused. Thereafter, Ms Ndlela from the respondent's customer services joined the proceedings to represent the respondent.

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 conduct[2].

5. Between January 2023 and August 2023, the NCC received complaints from four consumers: Macbeth Babeola Ndlovu (Ndlovu), Alta van Heerden (Van Heerden), Stephen Jardim (Jardim), and Nahim Shaik (Shaik) (collectively, the complainants or consumers as the context permits). The complaints involved alleged contraventions of provisions of the CPA by the respondent, 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) of the CPA

[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.

and section 27(a)(ii)[3] of the National Credit Act 34 of 2005 (the NCA) to hear this application.

HEARING OF THE MATTER ON AN UNOPPOSED BASIS

7. The NCC filed this application and served it on the respondent via the Sheriff on 28 March 2025.

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.

11. On 5 June 2025, the hearing commenced without the presence of the respondent or a representative of the respondent. While the hearing was in process, a member of the Tribunal's registry (the registry) informed the panel members of the Tribunal (the panel) that they had received a communication from a representative of the respondent that the latter was not aware of the hearing and that they wanted to request a postponement.

12. After a brief discussion by the panel, the respondent's representative, Ms Judy Snyman, joined the proceedings and advised the panel that the respondent asked for a postponement.

[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.

13. Ms Snyman confirmed that she had received the application and handed it over to Carmen, a representative of SEESA, an organisation that advises and assists the respondent with consumer protection matters. Ms Snyman further averred that she or the respondent did not receive a notice of set down and only became aware of the hearing that morning when she was informed by a member of their support team. Ms Snyman also stated that Carmen told her that she did communicate with the Tribunal. However, there is no evidence of this in the hearing record.

14. The panel considered Ms Snyman's request and noted that the notice of set down was sent to the respondent by registered mail as required by rule 30. The registry also apprised the panel of the track and trace report pertaining to this, indicating that the post office received the notice on 26 May 2025 and that a notification was sent out on 4 June 2025 at 09h21 that the mail was ready for the respondent's collection.

15. Even though the notice of set down was received only a day before the hearing, it must be noted that the respondent failed to file an answering affidavit. Therefore, the matter was set down on an unopposed basis.

16. Given the above circumstances, the panel refused to postpone the matter. Another representative, Ms Ndlela, from the respondent's customer service department, attended the hearing from then onwards as a representative of the respondent.

17. Both Ms Snyman and Ms Ndlela gave input during the hearing, but this does not constitute formal evidence. Therefore, rule 13(5) remains applicable.

BACKGROUND

18. Before dealing with the background of this matter, it is apt to state that the matter is being considered on the affidavits filed of record and the oral evidence of two of the complainants, Jardim and Shaik, whom the NCC called to clarify certain issues.

19. It is also apt to mention that all four consumers referred their complaints to the Consumer Goods & Services Ombud, who, after their investigation, concluded that there were no reasonable probabilities of the parties resolving their disputes through the alternative dispute resolution process. Accordingly, these processes were terminated in terms of section 70(2)[4].

20. The panel will now turn to the cases of each consumer, as presented by the NCC.

Ndlovu

21. On 6 May 2022, Ndlovu purchased a 6-seater suite from the respondent for R37 999.

22. According to the NCC, within five months of the purchase, the 3-seater piece of the suite became saggy on the armrest and made a “weird spring sound” when it was sat on. The respondent was informed of this, and on 22 December 2022, the respondent replaced the suite.

23. On 16 January 2023, the consumer informed the respondent that “there was a sound of a spring” when sitting on the left seat of the replaced suite.

24. On 17 January 2023, the respondent responded by stating that Ndlovu picked the 3-seater and tested it herself on 23 December 2023[5] and that the delivery note was signed, indicating that the goods were received in good condition.

Jardim

25. On 25 February 2022, Jardim purchased a couch from the respondent for R23 149.

[4] This section reads: “If an alternative dispute resolution agent concludes that there is no reasonable probability of the parties resolving their dispute through the process provided for, the agent may terminate the process by notice to the parties, whereafter the party who referred the matter to the agent may file a complaint with the Commission in accordance with section 71.”
[5] These dates and the chronology do not make sense, but the Tribunal only repeats here what the NCC alleged.

26. In April 2022, Jardim noticed that the couch had "a spring sound" and reported this to the respondent. The respondent replaced the couch, however, on 29 August 2022, Jardim noticed the same alleged defect and again reported this to the respondent.

27. The respondent offered to repair the replaced couch, but Jardim refused and demanded a refund of the purchase price. The respondent did not respond to this demand. During the hearing, Ms Ndlela again offered to have the goods repaired.

28. Jardim also testified during the hearing and confirmed that the couch was replaced once, and the current problem is with the replaced couch[6]. He also testified that he requested to replace the second coach, but the respondent was not prepared to do so. They instead wanted to repair it. He also requested a refund, which was ignored.

29. Jardim initially testified that they do not sit on the L-shaped couch side, but on questions of clarification, namely whether and for what reason they do not sit there, he explained that they do sit there from time to time, but because it is an L-shaped couch, they tend to sit more on the other side.

Van Heerden

30. On 17 July 2022, Van Heerden bought a lounge suite for the respondent for R50 779. He paid R24 000 in cash and R26 779 by card.

31. The lounge suite was delivered to Van Heerden in August 2022, and within five months, namely in January 2023, the leather started peeling off.

32. Van Heerden reported the above to the respondent on 6 February 2023. After assessing the suite, the respondent informed Van Heerden that it was found to have discolouring and that the leather was dry and cracked. They blamed these

[6] This is contrary to what was stated in the founding affidavit, namely that the couch was replaced twice.

issues on Van Heerden for not cleaning the leather regularly with leather care products.

33. In its assessment report, it was noted that leather care products would not be the remedy once the damage on the couch had occurred and that the respondent would have to replace the panels, which would be at Van Heerden's costs, as the damage happened while the lounge suite was in his care[7].

Shaik

34. Shaik ordered a special order item, a lounge suite, from the respondent. The respondent required a 50% deposit. Shaik paid the deposit of R14 000 in seven instalments of R2 000 each from March 2022 until February 2023[8]. The order was placed on 6 February 2023 when the last instalment of the deposit was paid.

35. On 20 February 2023, Shaik enquired about the dimensions of the couch. According to his oral evidence, he was concerned that the couch he ordered would not fit into his new place.

36. Correspondence between him and the respondent shows that on 22 February 2023, he asked for the ordered goods to be changed from a 3-seater daybed to a 2-seater daybed, which would fit in his home. He also asked to change the material colour from brown to pebble.

37. On 24 February 2023, the respondent replied by email, confirming that the supplier could change the daybed and requesting Shaik to make his final changes. According to Shaik's oral testimony, he spoke with the respondent the same day and arranged to visit their premises the following day to make his final choices.

38. Shaik testified that on 25 February 2023, he attended the respondent's premises, and they agreed to change his order to his suitability. A new quote[9] was provided

[7] See page 217 of the record.
[8] Seven notifications of payments from Shaik's bank are attached on pages 115 to120 of the record.
[9] The quote is on page 104 of the record and a clearer copy was sent to the Tribunal by email during the proceedings. The clearer copy indicates the date as 24 February 2023.

and agreed.

39. On 28 February 2023, however, the respondent informed Shaik by email that their supplier would not be able to change the goods as they had already made the frame and that the warehouse was not notified of the fabric change, resulting in them having already put the fabric on some of the pieces.

40. On 3 March 2023, the respondent again emailed Shaik to inform him that he could not change the order since it was a special order, and the couch was already in progress. Shaik responded later the same day, advising that he would not be paying any further for the item but would lodge a claim with the NCC and go through a legal route to resolve the matter.

41. On 16 March 2023, Shaik sent an email to the respondent stating that he had asked for amendments to the goods before they were manufactured and was allowed to do so. The changes were agreed to, and he was even provided with a new invoice. Since the changes could not be made, he advised that he rather get his money back.

LEGAL CONSIDERATIONS AND DISCUSSION

42. The NCC alleges that the respondent contravened sections 55(2)(a) to (c) read with section 56(2)(b), section 56(2) and Section 56(3) in respect of Ndlovu, Van Heerden and Jardim, and section 19(5)(b) and 95(6)(c) in respect of Shaik.

43. The panel shall first deal with the contraventions of the provisions under sections 55(2)(a) to (c) and 56(2) and (3).

44. Section 55(2)(a) to (c), reads:

> *"(2) Except to the extent contemplated in subsection (6)*[10]*, every consumer has a right to receive goods that—*
>
> > *(a) are reasonably suitable for the purposes for which they are generally intended;*

[10] Subsection (6) is not applicable and is, therefore, not referred to.

(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".

45. Section 56(2) and (3) reads:

(2) 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 to the consumer the price paid by the consumer, for the goods.

(3) If a supplier repairs any particular goods or any component of any such goods, and within three months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier must—

(a) replace the goods; or

(b) refund to the consumer the price paid by the consumer for the goods.

46. At this point, it is convenient to address one issue, namely, whether section 56(3) applies to the matters pertaining to Ndlovu and Jardim as claimed by the NCC in the pleadings. In both these matters, the respondent had replaced the goods initially purchased. Section 56(3) only finds application when a supplier has repaired any particular good or component of such goods, which is not the case for these two consumers. Section 56(3), therefore, is not applicable. During the hearing, the NCC conceded this and agreed that when the replacement goods were delivered, a new period of six months, as contemplated in section 56(2), kicked in. Subsection (2) instead of (3), therefore, may be applicable in the cases of Ndlovu and Jardim.

47. Since the NCC relies on alleged defects of the goods pertaining to Ndlovu, Van Heerden and Jardin, regard must also be had to the definition of a defect as contained in section 53(1)(a)[11], as meaning;

> *"(i) any material imperfection in the manufacture of the goods or components, 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."*

48. Contraventions of provisions under sections 55 and 56 have been the subject of many cases in this Tribunal and the superior courts. A leading case in this regard is Motus Corporation (Pty) Ltd and Another v Wentzel[12](Wentzel), where the Supreme Court of Appeal (SCA) reiterated that not every small fault is a defect as defined, stating that it must either "render the goods less acceptable than people generally would reasonably be 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."

49. In Wentzel, the SCA questioned whether every rattle or unfamiliar noise constitutes a defect and stated that a "defective module may be readily replaced, as occurred with the immobiliser [of the vehicle concerned in the matter]. Does that render the vehicle defective so as to entitle the purchaser to return it and demand repayment of the purchase price? Clearly not."[13]

50. In the case of Ndlovu, the initial couch purchased became shaggy on the armrest and had a weird sound on the headrest. The couch was replaced, and the investigation report reported that the same alleged defects emerged concerning the replacement couch.

[11] The NCC does not rely on any failure, hazard or unsafe aspects pertaining to the goods, and the definition of these terms under section 53(1) is, therefore, not referred to in this judgment.
[12] [2021} ZACSA 40; [2021] 3 All SA 98 (SCA) (13 April 2021).
[13] At paragraph [41].

51. The investigation report refers to the correspondence between Ndlovu and the respondent. From this, it is apparent that, on 16 January 2023, Ndlovu reported "a sound of a spring on the left seat when seating on it"[14]. On 5 February 2023, Ndlovu sent a further email to the respondent advising that at "this current moment the sound is still there but not louder as before".[15] These complaints were in respect of the replaced (second) couch.

52. What is clear is that the second couch did not have the same alleged defects as the first couch. Ndlovu never mentioned the sagging of the second couch, only the spring sound that emanated from it when sat on.

53. The question that needs to be addressed is whether the spring sound constitutes a defect in terms of the CPA. It is not enough to agree that there is a defect as alleged. The materiality of the defect must also be assessed, especially whether the alleged defect renders the goods less acceptable than persons generally would be reasonably entitled to expect or whether any characteristics of the goods render it less useful, practicable or safe than persons would be reasonably entitled to expect in the circumstances.

54. In Auto Extreme CC v Lourens[16], the high court held that a qualifying defect is one that is material and renders the goods to be less acceptable than persons generally would be reasonably entitled to expect. The court further stated that the test involved in determining the quality of the defect is one that is objective, as opposed to a subjective one. The court referred to Holmdene Brickworks (Pty) Ltd v Roberts Construction[17], where the Appellate Division had this to say:

> *"Broadly speaking in this context a defect may be described as an abnormal quality or attribute which destroys or substantially impairs the utility or effectiveness of the res vendita, for the purpose for which it has been sold or for which it is commonly used."*

55. In overturning a decision of the Tribunal, the high court in Auto Extreme said:

[14] See p 58 of the record.
[15] On page 66 of the record.
[16] [2024] ZAGPPHC 1101 (25 October 2024).
[17]

"A conclusion reached by the full panel that the vehicle is found to be unsuitable for its intended purpose, is simply baseless and bereft of evidentiary support. It is accepted that grammatically, a defect means an imperfect or faulty something. However, where the legislature has provided a technical meaning of any word, such a word may not be given a grammatical meaning. It must be given the technical meaning afforded by the legislature."

56. All that one can deduce from the papers is that squeaky noise emanating from Ndlovu's couch when one sits on it, nothing more. Objectively speaking, this does not make the couch less acceptable than can be reasonably expected, nor does it make it less useful, practicable or safe than persons would be reasonably entitled to expect.

57. In Jardim's case, the complaint is also about a noise, referred to as a "spring sound," emanating from the left side of the replacement couch. Mr Jardin testified that they do not sit on that side of the couch where the noise comes from, but when asked why, he testified they do sit there, or when guests visit, they do sit on that side. When asked again whether there was some discomfort when sitting where the noise comes from, Jardim confirmed that he does sit there occasionally, but that he and his wife tend to use the L-shape side more. He testified that the side from which the noise emanates is not used excessively, and it is not that he would not sit there purposefully.

58. Like the case of Ndlovu, the panel is not convinced that a defect has been proven by the spring noise emanating from Jardim's couch when one sits on a particular section of the couch away from the L-shape. His testimony confirms that the noise is not why that side of the coach is used less often than the side where the L-shape is formed. The noise may not represent a material defect under the CPA. However, the respondent offered to repair the couch, which was repeated during the hearing.

59. In respect of the cases of Ndlovu and Jardim, it cannot be concluded that the goods were not reasonably suitable for the purpose for which they were generally

intended. These noises are not material imperfections for them to qualify as defects. Both couches are in use; the only complaints are about spring noises. In Jardim's case, he was told that the noise was due to a factory fault. Therefore, the panel is of the view that the NCC did not make out cases entitling it to orders under either section 56(2) or 56(3).

60. In Van Heerden's case, the respondent confirmed the alleged defect as a leather discolouring, and the leather was dry and cracked. A photograph attached to the papers[18] depicts the peeling leather. These defects became apparent, and the respondent was informed thereof within the six months contemplated in section 56(2).

61. Leather is a material which one can expect to be durable for a long period of time. It cannot be denied that it requires care, but for it to discolour, dry up and crack within six months from delivery by a supplier is indicative of compromised quality. Good quality is one of the features required under section 55(2)(b). Discoloured, dry and cracked leather after six months of delivery must be regarded as a material imperfection that renders the goods less acceptable than persons would reasonably be entitled to expect.

62. In the circumstances, the panel is of the view that a defect as defined has been shown to exist in the goods purchased by Van Heerden, and a finding of a contravention of section 56(2)(b) read with section 55(2)(b) is appropriate. Consequently, an order for a refund of the purchase price, as requested, should follow.

63. Shaik's case concerns special order goods, which are defined in section 1 as "goods that a supplier expressly or implicitly was required or expected to procure, create or alter specifically to satisfy the customer's requirements."

64. Shaik requested adjustments to his order of special order goods as the lounge suite he originally ordered would no longer fit into the place he had since moved into. He communicated with the respondent to clarify the dimensions. He also

[18] On page 218 of the record.

wanted the fabric changed to suit his new home. On 24 February 2023, the respondent confirmed that it was possible to change his order, and he arranged to attend the respondent's premises the following day to make final decisions.

65. Shaik attended the respondent's premises on 25 February 2023 as arranged and testified that the parties agreed on the dimensions and fabric to cover the daybed. He received a new quote for the goods agreed upon that day.

66. Section 17 deals with a consumer's right to cancel an advanced booking, reservation, or order, but does not apply to special order goods. However, the NCC's case is not about the cancellation. Instead, the NCC alleges a contravention of sections 19(5)(b) and 19(6)(c).

67. The applicability of section 19(6)(c) can quickly be disposed of. This subsection deals with the tendering of the delivery of goods or the performance of any service by the supplier on a date or at a time other than as agreed with the consumer, in which case the consumer may cancel the agreement without penalty. The present matter does not concern these issues relating to delivery, and section 19(6)(c) is, therefore, not applicable.

68. Section 19(5)(b) provides:

> *"When a supplier tenders delivery to a consumer of any goods, the supplier must, on request, allow the consumer a reasonable opportunity to examine those goods to ascertain whether the consumer is satisfied that the goods—*
>
> *(a) . . .*
>
> *(b) in the case of a special-order agreement, reasonably conform to the material specifications of the special order."*

69. Section 19(5)(b) kicks in on the supplier tendering delivery of the goods to the consumer. In the case of special order goods, the goods must reasonably conform to the material specifications of the order.

70. In the present matter, the delivery of Shaik's special order goods had not yet

been tendered. This jurisdictional requirement was not met when Shaik informed the respondent in March 2023 that he would no longer pay towards the goods and instead wanted the money he had already paid back.

71. It was premature for any reliance on section 19(5)(b), and this section is, therefore, also not applicable in these circumstances.

72. To the extent that a new agreement was entered into between Shaik and the respondent on 25 February 2023, which novated the previous agreement between them, Shaik would not be without recourse had the jurisdictional facts of section 19(5)(b) been fulfilled and had the specially ordered goods not reasonably conformed to the material specification of the novated agreement. In these circumstances, Shaik could reject the delivery of the non-conforming goods and return them. He would be entitled to receive a full refund of the consideration he had paid for the goods in terms of section 20(2)(b). Even then, delivery is a required jurisdictional fact.

73. The panel is of the view that the issues between Shaik and the respondent fall within the realms of breach of contract, over which the Tribunal does not have jurisdiction.

CONCLUSION

74. The panel finds that there was a contravention of section 56(2) read with section 55(2)(b) only.

75. The NCC asked that an administrative fine be imposed on the respondent. The request was based on the assumed aggravated circumstance of contraventions against all four consumers. However, the panel found that a contravention only concerned one consumer.

76. In the cases of both Ndlovu and Jardim, the respondents replaced the initial goods that they purchased. It is not that the respondent was unsympathetic towards their complaints. In addition, in the case of Jardim, the respondent is still

prepared to repair his daybed, and it will be appropriate to include this in the order.

77. In the above circumstances, the panel has concluded that an administrative fine is inappropriate and no order to this effect will be made.

THE ORDER

78. In the result, the following order is made:

78.1. It is declared that the respondent contravened section 56(2) read with section 55(2)(b) of the CPA.

78.2. It is declared, further, that the above contravention constitutes prohibited conduct.

78.3. The respondent is interdicted from engaging in similar conduct as referred to above.

78.4. The consumer, Alta van Heerden, shall make the defective goods available for collection by the respondent within 10 business days of the date of issuance of this order.

78.5. The respondent shall refund Alta van Heerden the purchase price of the defective goods, R50 799.00, before the goods are collected in terms of the aforegoing sub-paragraph, into a bank account as elected by Van Heerden.

78.6. The respondent shall repair Jardim's daybed to resolve the spring noise that emanates from it. Jardim shall make the daybed available for this purpose within 10 business days of the issuance of this order. The respondent shall complete the repairs within 15 business days from when Jardim makes the daybed available.

78.7. There is no order as to costs.

S Hockey (Tribunal member)

Presiding Tribunal member Ms Z Ntuli and Dr M Peenze concur.

Authorised for issue by The National Consumer Tribunal

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national consumer tribunal