IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION

Case No: **NCT/392117/2025/73(2)(b)**

In the matter between:

NATIONAL CONSUMER COMMISSION **APPLICANT**

and

NOLLY MOTORS (PTY) LTD **RESPONDENT**

Coram:

Mr S Hockey - Presiding Tribunal member
Dr M Peenze - Tribunal member
Adv C Sassman - Tribunal member

Date of the hearing: - 3 July 2025
Date of judgment: - 16 July 2025

JUDGMENT AND REASONS

INTRODUCTION

1. This is an application in terms of section 73(2)(b) of the Consumer Protection Act, 68 of 2008 (the CPA). This section authorises the National Consumer Commission (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[1].

2. On 17 October 2022, the NCC received a complaint from Ms Cwayita Ntombekaya Makubalo (the consumer) regarding alleged defects in a vehicle she purchased from the respondent on 13 April 2022. The NCC investigated the complaint and concluded that the respondent contravened provisions of the CPA. This led to the NCC filing this matter with the Tribunal under section 73(2)(b).

3. The applicant is the NCC, an organ of the state established in terms of section 85(1) of the CPA. At the hearing, the applicant was represented by Mr Miehleketo Magagula (Mr Magagula), a legal advisor employed by the NCC.

4. The respondent is Nolly Motors (Pty) Ltd, a company incorporated under the company laws of South Africa and a supplier as defined in section 1 of the CPA.

5. At the hearing, Mr Igwaeku Peter, an employee of the respondent, initially appeared on its behalf. As the parties indicated that there had been an attempt to settle the matter and that they were prepared to engage in further discussions in this regard, the matter stood down for this purpose whilst the Tribunal's panel attended to another matter which was on the roll for the day. On resumption of the matter, Mr Theka Emmanuel, a candidate attorney from Pretorius Osborne Attorneys, appeared on the respondent's behalf. However, he advised that he appeared only on a watching brief on behalf of the respondent. The panel was informed that there were no prospects that the matter would be settled.

TERMINOLOGY

6. 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)[2].

---

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

[2] 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).

HEARING OF THE MATTER ON AN UNOPPOSED BASIS

7. The NCC filed this application after it was served on the respondent by hand at its premises on 29 April 2025.[3]

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. Although the matter was set down on an unopposed basis, the respondent was present during the hearing, but Mr Emmanuel made it clear that he attended only on a watching brief.

BACKGROUND

12. On 13 April, the consumer entered into a sale agreement for the purchase of a used 2013 Audi A4 (the vehicle) for R146 000. The agreement contained the following provisions (quoted verbatim):

> *"All cars purchased at Nolly Motors are sold as they are, customers must check everything before they can take the car. Should the customer experience any problems with the car, the dealership will only be*

[3] A service affidavit is attached to the record on page 117.

responsible for the fixing of all electrical problems only for the first 30 days.

There is no exchange after 3 days of purchase. Should the customer decide to terminate the deal, 50% will be deducted from the full deposit paid. There will be no refund of deposit should the client decide not to take the car. The goods will therefore be sold as is."

13. After the consumer took delivery of the vehicle on 15 April 2022, she discovered certain alleged defects, which are recorded in the founding affidavit as follows:

"a) The overflow tank/reservoir was leaking, which subsequently caused the engine to overheat;

b) The suspension was poorly fitted and made of substandard materials;

c) There was a brake fluid leak;

d) All four tyres were worn out;

e) No service history book was provided with the vehicle; and

f) The vehicle was delivered without the jack, wheel spanner, and spare wheel, despite these items being promised at the conclusion of the sales agreement."

14. It is averred in the founding affidavit that on 19 April 2022, the consumer notified the respondent of the above alleged defects she had discovered and requested their urgent response. She also advised them that she would get quotations for the defects and mechanical issues.

15. The above notification was sent by the consumer to the respondent by email, which is attached to the founding affidavit. The email reflects that the consumer advised the respondent that the vehicle was overheating as the water tank was

leaking, that the timing chain was old and needed to be fixed, that the suspension needed to be done, the tyres needed replacement, and there were no jack, wheel spanner, and other items that should come with the vehicle. There was no mention of a brake fluid leak. The consumers requested the respondent's urgent response without specifying what response was required.

16. Later on 19 April 2022, the consumer obtained a quotation for new tyres, amounting to R6 160, and the following day she took the vehicle to Bassflex, trading as Farm Garage (Farm Garage), for repairs. She paid R8 440 for the repairs.[4] The repairs listed in the tax invoice included the replacement of the water pump, resealing the front cover and the addition of anti-freeze.

17. In the founding affidavit, the NCC states that the consumer sent a follow-up email and a WhatsApp message to the respondent on 28 April 2022 regarding the issues raised in her communication of 19 April 2022. It is further stated that the respondent replied via WhatsApp, indicating that they would not attend to any repairs and that any such repairs would be at the consumer's own expense. It is mentioned that a copy of the WhatsApp conversation is attached as annexure "N7". However, the only annexure marked "N7" attached to the papers is a WhatsApp exchange, which appears to be an internal conversation between two persons from the respondent. This exchange confirms that the respondent's stance was that they would not cover the costs for mechanical problems with the vehicle.

18. On 29 April 2022, the consumer telephoned the respondent to request the cancellation of the sales agreement and a full refund of the purchase price. She stated that this request was made due to her inability to afford the repair costs, the discovery that the vehicle had previously been involved in an accident, contrary to her explicit stipulation before the sale that she did not want to buy an accident-damaged vehicle and that the vehicle was sold "voetstoots" contrary to the provisions of the CPA. Reference is made to annexure "N10" to verify the latter, but no such annexure is attached to the papers.

[4] See the investigation report on page 24 of the record.

19. On 20 May 2022 and 6 June 2022, the consumer carried out further repairs to the vehicle. The repairs on 26 May 2022 included replacing the left and right control arm bushes, the left and right lower control arm bushes, and performing a wheel alignment. The invoice for the repairs carried out on 6 June 2022 is illegible, so it is unclear what repairs were performed. The total costs of the repairs on both occasions amounted to R11 900.

20. Further repairs on the vehicle were done on 18 July 2024 at the cost of R3 502. The tax invoice reflects that the repairs related to oil cooler gaskets, anti-freeze, sundries, and the gasket for the water pump. A labour charge was also included.

21. Yet again, on 12 December 2024, further repairs were done to the vehicle at a cost of R13 789.31, but it appears that the consumer only paid R10 000 in respect of these. The tax invoice reflects charges for sundries, radiator, CVT Oil Synthetic AFT (5L), CVT Synthetic AFT (1L), parts cleaner, and anti-freeze/summer coolant (1L, 96%).

22. According to the NCC, the consumer spent a total amount of R33 842.09 on repairing the vehicle.

23. It is averred in the founding affidavit that certain repairs, which was said to pose a significant risk to both the consumer and other motorists, needed to the vehicle remained unresolved at the time when the founding affidavit was deposed to, namely, an airbag (which presumably is faulty), and a steering angle sensor and actuator. In support of this assertion, the NCC attached an invoice from Audi Bloemfontein dated 23 April 2023.

24. The relief sought by the NCC is; a declaration that the respondent contravened section 56(2)(a) and (b) read with section 55(2)(a) to (c), and section 48(1)(b) and (c) read with section 51(1)(a) and (b); that these contraventions be declared prohibited conduct; that the respondent be interdicted from engaging in similar conduct; that the respondent refund the consumer the purchase price of the vehicle as well as the costs of the repairs thereto in the sum of R33 842.09; that an administrative fine of R1 million be imposed on the respondent; and,

alternatively to a refund of the repair costs, the issuing of a certificate in terms of section 115 to enable the consumer to pursue damages in a civil court.

POINT IN LIMINE

25. Before dealing with the alleged contraventions and whether the NCC is entitled to the relief sought, it is necessary to consider whether the referral of this matter to the Tribunal falls within the scope of section 116, which excludes the referral of complaints to the Tribunal or a consumer court more than three years after the act or omission that is the cause of the complaint, or in the case of a course of conduct, or continuing practice, more than three years after the date when the conduct or practice ceased.

26. During the hearing, members of the Tribunal's panel questioned Mr Magagula about the applicability of section 116.

27. Concerning the alleged contravention of section 56(2)(a) and (b), read together with section 55(2)(a) to (c), it appears from the application that the last communication between the consumer and the respondent occurred on 29 April 2022, when the consumer telephonically requested a cancellation of the sale and a refund of the purchase price. On 19 April 2022, the consumer informed the respondent of issues she discovered with the vehicle and sent an email "seeking redress" on 28 April 2022. To the extent that the respondent's actions triggered the commencement of the three years outlined in section 116, the only refusal communicated to the consumer was on 28 April 2022, when the respondent stated by WhatsApp that they would not attend to any repairs of the consumer's vehicle. The application was filed with the Tribunal on 29 April 2025, which, on the face of it, appears to be more than three years after the WhatsApp communication.

28. Mr Magagula drew the Tribunal's attention to the fact that Monday, 28 April 2025, was a public holiday and should therefore not be counted to determine the

prescription date. Needless to say, the same argument would apply to Sunday, 27 April 2025, which was also a public holiday.

29. In Road Accident Fund v Masinga[5] (Masinga), the Supreme Court of Appeal (SCA) had to consider how the five-year prescription period under the Road Accident Fund Act 56 of 1996 had to be computed in circumstances where the last day of the period fell on a public holiday. With reference to English case law, which the SCA held provided the answer which ties in with the protection afforded to the respondents in that matter by section 34 and, in general, the interpretation in section 39(1)(b) and (c) and (2) of the Constitution, it was held that applying this approach to the facts of the matter dealt with, *"the respondent could not have issued the summons on 16 June 2014, as it was a public holiday. It was therefore a question of an impossibility to perform. The impossibility was not of her own doing nor created by her but by law; the court was closed on the public holiday. To interpret the law with the result that the respondent fails to enjoy the full benefit of the five-year period — as she is entitled to — would result in an injustice and prejudice to her."*[6]

30. In this case as well, it was impossible for the NCC to file her matter with the Tribunal on 27 or 28 April 2025, as both days were public holidays. To fully benefit from the three years contemplated in section 116, the filing deadline should be extended to 29 April 2025. To hold otherwise, the NCC's right to refer this matter would be unjustly deprived, which the legislature could not have intended.

31. As for the alleged contravention of section 48(1)(b) and (c) read with section 51(1)(a) and (b), in considering whether these provisions fall under section 116, it is important to consider their wording. Section 48(1)(b) and (c) reads:

> ***48.*** *(1) A supplier must not—*
>
> *(a) offer to supply, supply, or enter into an agreement to supply, any goods or services—*

[5] [2018] ZACSA 94 (1 June 2018); 2018 (6) SA 481 (SCA).
[6] Supra at paragraph [19].

(i) at a price that is unfair, unreasonable or unjust; or

(ii) on terms that are unfair, unreasonable or unjust;

(b) …

(c) require a consumer, or other person to whom any goods or services are supplied at the direction of the consumer—

(i) to waive any rights;

(ii) assume any obligation; or

(iii) waive any liability of the supplier,

on terms that are unfair, unreasonable or unjust, or impose any such terms as a condition of entering into a transaction.

And section 51(1)(a) and (b) reads:

***51.** (1) A supplier must not make a transaction or agreement subject to any term or condition if—*

(a) its general purpose or effect is to—

(i) defeat the purposes and policy of this Act;

(ii) mislead or deceive the consumer; or

(iii) subject the consumer to fraudulent conduct;

(b) it directly or indirectly purports to—

(i) waive or deprive a consumer of a right in terms of this Act;

(ii) avoid a supplier's obligation or duty in terms of this Act;

(iii) set aside or override the effect of any provision of this Act; or

(iv) authorise the supplier to—

(aa) do anything that is unlawful in terms of this Act; or

(bb) fail to do anything that is required in terms of this Act;

32. The wording "*offer to supply, supply, or enter into an agreement to supply"*[7], *"require a consumer"*[8] and *"must not make a transaction or agreement subject to any term or condition"*[9] suggest that the commencement of the three years contemplated in section 116 commences, for the latest, at the commencement of the agreement in the circumstances if there are complaints relating to contraventions of the sections under discussion.

33. In relation to the alleged contravention of section 48(1)(b) and (c) read with section 51(1)(a) and (b), therefore, the complaint is precluded by section 116 of being considered by the Tribunal and the impugned provisions in the sale agreement was agreed to on 13 April 2022, and more than three years have elapsed by the time when the referral to the Tribunal was made.

FURTHER LEGAL CONSIDERATIONS

34. The Tribunal must now consider whether there has been a contravention of section 56(2)(a) and (b) read with section 55(2)(a) to (c). For this purpose, it is apt to have regard to these provisions, which are set out below:

Section 55(2)(a) to (c) reads:

> *(2) Except to the extent contemplated in subsection (6), 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."*

Section 56(2)(a) an (b) 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*

[7] In section 48(1)(a).
[8] IN section 48(1)(c).
[9] In section 51(1).

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."

DISCUSSION

35. The consumer discovered issues with the vehicle on two days after she purchased it. Four days later, on 19 April 2022, she notified the respondent of these problems. The following day, on 20 April 2022, before she received any response from the respondent, she had the vehicle repaired by a third party, Farm Garage.

36. The repairs attended to by Farm Garage were the replacement of the water pump and the resealing of the front cover. No work was performed on the suspension, which the consumer stated was poorly fitted and made of substandard materials. This matter being undefended and with the application of rule 13(5), the Tribunal is bound to accept the NCC's version relating to the vehicle's suspension and that this constitutes a defect as contemplated in section 55, read with section 53[10]. Furthermore, the Tribunal must also accept that the respondent, on 28 April 2022, communicated its refusal to attend to any repairs to the vehicle despite the fact that there was a wrong referral to annexure "N7" in the founding affidavit. The statement in the founding affidavit that the refusal was indeed communicated to the respondent must be accepted.

37. On 28 April 2022, after the respondent was notified of the issues with the vehicle, including the defects on its suspension, it refused to attend to any repairs to the vehicle and unequivocally stated that all repairs would be for the consumer's

[10] A defect is defined in this section as –
(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;

account. The respondent's refusal to assist the consumer resulted in her electing to have the sale agreement cancelled, to which the respondent failed to respond, thus amounting to a refusal to adhere to the consumer's demand in this regard.

38. It bears mention that the consumer had to attend to further repairs to the vehicle on 26 May 2022, after the respondent refused the consumer's request to cancel the sale and refund her the purchase price. The work performed on that day appears to be related to the vehicle's suspension issues, thus confirming that there were defects in the suspension, as reported to the respondent on 19 April 2022.

39. As for the missing spare wheel, wheel spanner and jack, the Tribunal is of the view that these are not defects contemplated in section 55 read with section 53. Also, the brake fluid leak was clearly not reported to the respondent, and this will not be taken into account in consideration of an appropriate order.

40. To sum up, the respondent contravened section 56(2)(a) and (b) read with section 55(a), (b) and (c) when they refused to repair the defect in the suspension of the vehicle, and thereafter to adhere to the consumers request for a cancellation of the sale agreement and a refund of its purchase price.

RELIEF SOUGHT

41. The Tribunal has already found that precluded from considering the contravention of 48(1)(b) and (c) read with section 51(1)(a) and (b) and that the respondent did contravene section 56(2)(a) and (b) read with section 55(2)(a) to (c). The Tribunal agrees that it is appropriate to declare the latter contravention prohibited conduct[11] and to grant an interdict prohibiting the respondent from similar conduct.

42. After the consumer notified the respondent of problems with the vehicle within the first month of its purchase and requested a cancellation of the sales agreement and a refund of the purchase price, the respondent denied the

[11] Prohibit conduct is defined in section 1 as an act or omission in contravention of the CPA.

consumer these rights under section 56(2), which meant the consumer was stuck with the vehicle ever since. The Tribunal is mindful of the time that has elapsed since then, but is nevertheless of the view that it is appropriate to make an order enforcing the consumer's right to cancel the sale agreement and for the respondent to refund the vehicle's purchase price to the consumer.

43. Regarding a refund for the vehicle repairs, it is noted that some repairs were carried out outside the six months specified in section 56(2), and some appear to relate to normal service items such as antifreeze and sundry items. The Tribunal is of the view that the NCC has not presented a clear case for a refund, and therefore, the claim in this regard should be rejected.

44. As for an administrative fine, the Tribunal takes into account that the respondent has been found to have contravened provisions of the NCA in one instance and has a clean record. The contravention is a serious one and a serious disregard for consumer rights. However, the refund of the vehicle's purchase price against the return of the vehicle, which obviously would have diminished in value due to the lapse of time and its use, would be reasonable in the circumstances and serve as a deterrent for the respondent and other suppliers. An administrative fine, therefore, will not be imposed.

THE ORDER

45. As a result, the following order is made:

45.1. It is declared that the respondent contravened section 56(2)(a) and (b) read with section 55(2)(a) to (c).

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

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

45.4. The respondent is ordered to refund the consumer R146 000.00 (one hundred and forty-six thousand Rand), being the purchase price of the vehicle, within ten business days of the issuing of this judgment;

45.5. The respondent is ordered to collect the vehicle from the consumer at its own expense, after refunding the consumer, at a collection time and date agreed to by the parties and facilitated by the applicant;

45.6. There is no order as to costs.

S Hockey (Tribunal member)

Presiding Tribunal members Dr M Peenze and Adv C Sassman concur

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

Ground Floor, Building B

Lakefield Office Park

272 West Avenue, Centurion, 0157

www.thenct.org.za

national consumer tribunal