HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: A68/2025

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 1 OCTOBER 2025

SIGNATURE

In the matter between:

AVURA MOTORS t/a AVURA EXECUTIVE AUTO	Appellant
and	
THE NATIONAL CONSUMER COMMISSION	First Respondent
THE NATIONAL CONSUMER TRIBUNAL	Second Respondent
VUKANI COLIMEAR MUTHAKI	Third Respondent

Summary: *National Consumer Tribunal – Finding that second-hand car dealership had contravened sections 55(2)(a) and 56(2)(a) of the Consumer Protection Act 68 of 2008 upheld – Finding based on sale of a vehicle with a latent defect and failure to remedy defect or to*

assist the consumer. Sanction of payment of repairs and fine of R100 000.00 confirmed. Appeal dismissed with costs.

ORDER

The appeal is dismissed, with costs.

JUDGMENT

The matter was heard in open court and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 1 October 2025.

DAVIS, J (with Bam J concurring)

Introduction

[1] The appellant, a second-hand car dealership, sold a pre-owned Mazda vehicle to a consumer. Within 28 days from the date of sale, the vehicle developed such radiator problems that it became inoperable.

[2] The appellant denied liability and refused to assist the consumer, who had to resort to his insurer. The costs of repairs amounted to over R100 000.00

[3] The National Consumer Tribunal (the Tribunal) found that the appellant had contravened certain sections[1] of the Consumer Protection Act[2].

[4] Pursuant to this finding, the Tribunal ordered the appellant to pay the costs of the repairs and fined the appellant R100 000.00, which had to be paid into the National Revenue Fund.

[5] The appellant appealed to this court in terms of section 148(2)(b) of the National Credit Act[3].

The background facts

[6] On 15 July 2022 the consumer, Mr Muthaki, purchased a pre-owned 2014 Mazda Drifter BT-50 vehicle from the appellant, Avura Motors t/a Avura Executive Auto. The purchase price was R288 577.50 and the odometer at the time was at 185 000km.

[7] Within 28 days from the date of purchase, the vehicle started manifesting operational problems, to *wit* sounds coming from the engine and constantly turning off.

[8] On 16 August 2022 the consumer telephonically complained of these problems to the appellant, who indicated that "they" could not help as the

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[1] In particular, sections 55(2)(a) – (d) and 56(2)(a).

[2] 68 of 2008.

[3] 34 of 2005.

warranty they gave at the time of sale, expired after 30 days or 1000 kms. Both these elements had already been reached at the time of the complaint.

[9] Upon receiving no assistance from the appellant, the consumer sought assistance from the Motor Industry of South Africa (MIOSA).

[10] The appellant's response on 7 September 2022 to MIOSA reads as follows: "*Vehicle was delivered on 15 July 2022 and was not delivered with any latent defects. These defects occurred after the sale. The customer does have an extended warranty which will accommodate these issues within their terms and conditions. We suggested that he use the warranty as we did not deliver this vehicle with any latent defects at that point of time*". Upon receipt of this letter MIOSA found that the matter does not engage its jurisdiction and thereupon closed its file.

[11] The consumer then took the vehicle to Northway Electro SA (Pty) Ltd on 11 September 2022 where he was quoted R106 088.28 for the repair of the vehicle.

[12] After acceptance of the quotation, the vehicle was repaired with the consumer's insurance paying R75 000.00 and the consumer paying R31 088.28.

[13] The consumer then approached the National Consumer Commission (the Commission) who investigated his complaint and verified the above facts, including proof of payment.

[14] Included in the investigation report of an inspector of the Commission was an assessor's report obtained by the consumer's insurance company at the time that the vehicle was going to be repaired. The relevant parts of that report, read as follows: "*Details of failure:*

- *Cylinder head casing corroded at all water jackets.*
- *Clear signs that cylinder head gasket is blown with gasket corroded/rusted at several locations ...*
- *Radiator in good external condition but severely clogged with rust and corrosion.*
- *Thermostat in good condition but internally clogged with rust and corrosion.*

Assessor's remarks and conclusion:

- *Damage occurred due to overheating. Cause of overheating hard to establish but likely due to water loss. As all cooling system components are corroded and contaminated with rust, it is likely that overheating occurred due to one or more failed cooling system components due to prolonged operation with insufficient cooling mixture. Engine to be reconditioned*".

The appellant's position

[15] In addition to the position set out in par [10] above, the appellant had the following to say in its answering affidavit before the Tribunal in relation to the cause of the engine failure: firstly, that it had the vehicle serviced on 17 May 2022 by Sam's Car Bar, that is prior to the sale. The appellant alleged that the cooling system was part of the service and that no faults had been reported.

[16] Secondly, the appellant alleged that the engine failure was caused by the respondent's own negligence. The appellant's reading of the assessor's report, led the appellant to contend as follows: "*The above assessors report confirms that the failure occurred due to poor maintenance of the vehicle [and that] any failure/defect was due to the negligence of the consumer by failing to properly*

maintaining (sic) the vehicle. [The appellant] is fully aware of the obligations imposed upon it by the Consumer Protection Act and prides itself on the quality and safety of the goods sold".

The findings of the Tribunal

[17] After having considered all the documents submitted, as well as the submissions made by the parties, the Tribunal considered the evidence as follows (references to the respondent before the Tribunal are references to the appellant before us and references to the applicant are references to the consumer):

> "*20. Neither party disputes the consumer's insurer's assessor report and the damage to the vehicle indicated in it. However, the respondent maintains that the damage was caused by the consumer's own negligence in not sufficiently maintaining the vehicle while using it. In contrast, the applicant alleges that the cause of the damage was a latent defect present at the time of the sale of the vehicle that only manifested some twenty-eight days later.*
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> *21. In terms of section 117, the standard of proof in proceedings before the Tribunal is on a balance of probabilities. In this respect, the Tribunal is persuaded that the assessor's finding that damage to the vehicle was likely caused by water loss due to the corrosion and rust contamination of all the cooling system components cannot be attributed to the consumer's negligence. The Tribunal is not convinced that the relatively short period in which the applicant drove the vehicle can account for the assessor's finding that there was a prolonged operation of the vehicle with insufficient cooling mixture,*

leading to possible water loss, rust and corrosion of all the cooling components. On a balance of probabilities, the Tribunal is inclined to agree with the applicant that this type of corrosion and rust contamination was a latent defect in the vehicle at the time of its sale.

22. *No evidence before the Tribunal suggests that the damage was caused by the consumer's negligence or normal wear and tear while the consumer had the vehicle. By the respondent's own admission during the hearing, the consumer was not required to service the vehicle between the time he took possession of it and the time it overheated. Further, there is no evidence that the consumer ignored any warning signals that the vehicle needed to be checked or that it was overheating. There is, therefore, no evidence of any misuse of the vehicle by the consumer or any failure to take reasonable steps required to maintain the vehicle within the period of usage.*

23. *The evidence before the Tribunal indicates that the vehicle was defective when sold and that the defect only manifested itself later. The evidence further indicates that the respondent refused to repair the vehicle when the consumer requested it be repaired. Therefore, the respondent's conduct amounts to a contravention of sections 55(2) and 56(2)(a). The contraventions are serious and amount to prohibited conduct*".

[18] Sections 55(2) (a) – (d)[4] of the CPA provide that consumers have the right to receive goods that are reasonably suitable for their intended purposes. They also have a right to goods that are of good quality and in good working order. The goods must be free of any defects and be useable and durable for a reasonable period of time.

[19] Section 56(2)[5] of the CPA provides that within six months after the delivery of 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. The supplier must, at the direction of the consumer, either repair or replace the failed, unsafe, or defective goods or refund the consumer the price paid for the goods.

[20] The Tribunal found that both these sections had been contravened.

The sanction imposed

[21] The Tribunal found that the rights afforded to consumers under the CPA are there to protect consumers, and an infringement of these rights can have serious financial consequences for consumers. Section 4(2)(b)(ii) of the CPA requires the Tribunal to make appropriate orders to give practical effect to a consumer's right of access to redress, which includes making any innovative order that better advances, protects, promotes and assures the realisation by consumers

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[4] 55(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) be useable and durable for a reasonable period of time, having regard to the use to which would normally be put and to all the surrounding circumstances of their supply; and
(d) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.

[5] 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 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—

of their rights in terms of the CPA. Section 150(i)[6] of the National Credit Act[7] (the NCA) further empowers the Tribunal to make any appropriate order required to give effect to a consumer's right in terms of the NCA or CPA when making a finding of prohibited conduct.

[22] Accordingly, the Tribunal found it appropriate to order that the appellant pay the costs of repair of the vehicle to the consumer and his insurer, in the amounts of R31 088.28 and R75 000.00 respectively.

[23] In considering the sanction of a fine, the consumer has suggested a fine of R1 million. The Tribunal, however, after having considered the nature, duration, gravity and extent of the appellant's contraventions, the loss or damages caused thereby, the behaviour of the appellant, the market circumstances in which the contravention had taken place, the level of profit derived by the appellant, the degree to which the respondent had co-operated with the consumer and the Tribunal and the fact that the appellant had no history of prior contraventions, imposed a fine of R100 000.00.

Evaluation

[24] On appeal before us, Adv Botes SC, who appeared for the appellant, argued that the "torpedo" which sunk the Tribunal's decision, was the fact that the assessor had not been called to testify. Reliant on this fact, Adv Botes SC contended that his report constituted inadmissible hearsay evidence.

[25] This point of law was not raised during the hearing before the Tribunal. It is not the kind of question that can be raised for the first time on appeal, for it would lead to prejudice to the consumer. Had the consumer been alerted to the

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[6] 150(i) In addition to its other powers in terms of this Act, the Tribunal may make ... any other appropriate order to give effect to a right, as contemplated in this Act or the Consumer Protection Act, 2008.

[7] 34 of 2005.

objection to the assessor's report being accepted into evidence without oral confirmation, he could have called the assessor to verify his report and conclusions. By only raising this objection for the first time on appeal, the consumer would — if the point is upheld — unfairly, be deprived of his opportunity to have led confirmatory expert evidence[8].

[26] There is, however, a more fundamental issue, one which, in my view makes the raising of this point more spurious than opportunistic. In the hearing before the Tribunal, the appellant, both in it answering affidavit and in extensive oral submissions on its behalf — regard being had to the record — relied heavily on the contents of the assessor's report. This was done without any objection to its admissibility or the lack of confirmatory expert evidence. I find that it amounts to a "sharp practice"[9] of a party to rely on a document (and its admissibility) when it suits him, but then later, on appeal and after switching counsel, to attempt to argue that the same document should be ignored and that the Tribunal must be found to have erred in not doing so.

[27] I find that the Tribunal had correctly relied on the contents of the assessor's report and had correctly summed up the evidence. Despite the fact that the vehicle had been serviced prior to the sale and that the coolant levels had been checked (as was submitted orally on behalf of the appellant in the proceedings before the Tribunal), it is clear from the description of the cooling system itself by the assessor, that (i) the defect must have been a pre-existing one of long duration and that (ii) the rust and contamination could not have occurred in the 28 days that the vehicle had been in possession of the consumer.

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[8] See *RAF v Mothupi* 2000 (4) SA 38 (SCA) at par [30], relying on *Paddock Motors (Pty) Ltd v Igesund* 1979 (3) SA 16 (A) at 23 D – H.

[9] A term borrowed from commercial behaviour and denoting something falling short of the expected ethical standards. See *Reynolds Presto Products Inc v PRS Mediterranean Ltd* 2014 (5) SA 353 (GP) at [17] and [18].

[28] No evidence of any nature had been presented by the appellant of any negligence on the part of the consumer, as alleged in the appellant's answering affidavit. Moreover, the appellant's counsel at the time had conceded before the Tribunal that there was no need for the consumer to have serviced the vehicle in the 28 day-period or indeed, in the period up to when the vehicle was repaired. There was also, so he conceded, no evidence of any warning light or other indication that the consumer should have done anything to prevent the overheating of the engine.

[29] On a balance of probabilities (which both parties have correctly agreed is the applicable onus in proceedings before the Tribunal)[10] the vehicle was simply sold with a latent defect which made it unsuitable for continued use without a major overhaul. This latent defect was a grossly deteriorated and internally rusted engine cooling system.

[30] In respect of the fine imposed, counsel for the appellant argued that he could find no judgment providing guidance as to the extent of the fine which may be imposed and that R100 000.00 was shockingly disproportionate, hence his suggestion of R20 000.00.

[31] Section 112(2) of the CPA provides for a cap or upper limit of fines which may be imposed. The limit is 10% of the guilty party's annual turnover, limited to a fine of R1 million. This is also the fine the Commission contended for in an attempted cross-appeal, which was not pursued.

[32] The Tribunal has in recent instances imposed fines of R500 000.00[11] and R1 million[12]. Although the Tribunal had also previously, in a matter relating also

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[10] See also section 117 of the CPA.

[11] *National Consumer Commission v Cell C* (11 February 2025).

[12] *National Consumer Commission v Braaiblock (Pty) Ltd* (11 December 2024).

Date of Hearing: 14 August 2025

Judgment delivered: 1 October 2025

APPEARANCES:

For the Appellant:	Adv F W Botes SC
Attorney for the Appellant:	Arthur Channon Incorporated Attorney, Pretoria c/o De Jager Incorporated, Pretoria
For the 1st & 2nd Respondent:	
Attorney for the 1st & 2nd Respondent:	Makhafola Attorney Inc, Pretoria

to the sale of a motor vehicle, imposed a fine of R50 000.00[13], there is nothing before us to indicate that the Tribunal has in the present instance not exercised its discretion properly or that it had not evaluated the factors listed in section 112(3) of the CPA correctly[14]. Accordingly the appeal against the imposed sanction must also fail.

[33] As to costs, I find no reason to deviate from the customary rule that costs follow the outcome. I am further bolstered in exercising this court's discretion against the appellant, when regard is had to the manner in which the appellant sought to attack the Tribunal's findings on the evidence before it, relating in particular, to the assessor's report.

Order

[34] The order is therefore as follows:

The appeal is dismissed, with costs.

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

I agree

N BAM
Judge of the High Court
Gauteng Division, Pretoria

[13] See *Platinum Wheels (Pty) Ltd v National Consumer Commissioner* 2025 (3) SA 459 (SCA).

[14] These are the factors which have been listed in par [23] above.