

**IN THE NATIONAL CONSUMER TRIBUNAL
SITUATED IN CENTURION**

Case Number: NCT/396874/2025/73(2)(b)

In the matter between:

NATIONAL CONSUMER COMMISSION

APPLICANT

and

KIA EAST RAND (PTY) LTD

FIRST RESPONDENT

MOTOR FINANCE CORPORATION

SECOND RESPONDENT

Coram:

Adv C Sassman - Presiding Tribunal member

Mr S Mbhele - Tribunal member

Dr A Potwana - Tribunal member

Date of Hearing - 4 September 2025

JUDGMENT AND REASONS

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, Mr T Kutumela (Mr Kutumela), a legal advisor employed by the applicant, represented the applicant.
2. The first respondent is Kia East Rand (Pty) Ltd, a supplier as defined in section 1 of the CPA. Adv F Botes SC of the Pretoria Society of Advocates represented the first respondent.
3. The second respondent is cited as Motor Finance Corporation. The second respondent's legal standing and capacity in these proceedings have not been disclosed. No order is sought against it, and it did not file any answering papers or represent itself in the hearing.

TYPE OF APPLICATION AND JURISDICTION

4. This application is 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.
5. 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 (the NCA).

MATTER TO BE DECIDED

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

INTRODUCTION

7. On 3 November 2023, the applicant referred a complaint to the Tribunal in terms of section 73(2)(b) of the CPA, using the prescribed form, Form T1.73(2)(b)CPA. In "Part D: Order sought from the Tribunal" of this form, the applicant stated that it is applying for an order in the following terms:
 - 7.1. declaring that the respondent contravened section 56(3) read with section 55(2)(a) to (c) of the CPA;
 - 7.2. declaring the respondent's contravention of section 56(3) read with section 55(2)(a) to (c) of the CPA prohibited conduct;
 - 7.3. interdicting the respondent from engaging in conduct amounting to contraventions of the sections of the CPA cited above;
 - 7.4. directing the respondent to refund the complainant R216 282.50 for the purchase of the vehicle;
 - 7.5. directing the respondent to pay an administrative penalty of R1 000 000,00 (One Million Rand);
 - 7.6. issuing a certificate in terms of section 115 of the CPA to enable the complainant to pursue damages in a civil court; and
 - 7.7. any appropriate order contemplated in section 4(2)(b)(ii) of the CPA.

FACTS

8. The applicant received a complaint from Ms Mills Malekgale Leutle (the complainant) alleging that

on 9 September 2022, she bought a used 2015 Audi A3 (the vehicle) with an odometer reading of 116 393 km. In October 2022, the complainant informed the first respondent that the vehicle was overheating and that the “Low Engine Pressure” warning had illuminated on the instrument cluster. The first respondent collected the vehicle and replaced the water pump without cost to the complainant. A copy of an invoice dated 19 October 2002 is annexed to the applicant’s papers.

9. Upon receiving the vehicle, the complainant reported to the first respondent that the vehicle was not fully repaired as the “Low Engine Oil Pressure” warning light was still present. The first respondent repaired the defect and returned the vehicle to the complainant on 27 October 2022. In January 2023, the engine warning light illuminated. The first respondent had the vehicle partially repaired by Audi. Audi’s invoice reflects that the oil pressure warning light illuminated intermittently after Audi completed its share of the repairs.
10. Since it was expensive to complete the repairs by Audi, the first respondent removed the vehicle from Audi and had it repaired by Rotary Turbo Tech (Rotary). The repairs by Rotary were unsuccessful. On 22 February 2023, the complainant emailed the first respondent requesting a cancellation of the transaction. The first respondent refused.
11. The first respondent claimed it carried out a 125-point check on the vehicle before delivery, and no defects were detected. The vehicle was then taken to a Dekra Centre, where it passed a roadworthiness test. The Dekra Centre also completed a full condition assessment; no major issues were detected.
12. According to the first respondent, after the complainant complained that the vehicle was overheating, they inspected it. They replaced the water pump because the vehicle could not be properly tested without being replaced. After the water pump was replaced, the vehicle was still overheating. A further inspection revealed that the cylinder head gasket had blown. The complainant authorised the repairs, and the first respondent had the cylinder head gasket repaired at no cost to the complainant. The repairs were completed on about 27 October 2022, and the vehicle was returned to the complainant.
13. During or about January 2023, the complainant reported that the oil pressure warning light illuminated again. The first respondent collected the vehicle from the complainant and brought it to its premises. It sent the vehicle to Audi for diagnosis and repairs. After two stages of repairs, Audi did not effectively repair the vehicle and suggested replacing the camshaft. A specialist advised

that it was not necessary to replace the camshaft and instead replaced a cam bridge, two valve cam adjusters and reset the cam timing. At this point, the respondent declined further repairs by Audi and took the vehicle to Rotary.

14. Rotary inspected the vehicle and found that the cam bridge and cam adjusters needed to be replaced. Rotary carried out the repairs. After the repairs, Rotary established that the cam timing required adjustment. The first respondent received the vehicle back and tested it extensively. The vehicle was mechanically sound and in working order. The first respondent covered all the costs of repairs, and the vehicle was returned to the complainant.
15. Approximately a week later, the complainant reported that the vehicle was making an unusual noise and smoking excessively. The first respondent sent its representative to inspect the vehicle. It was discovered that the oil had been overfilled by two litres. The complainant's brother admitted that he had overfilled the oil. The vehicle was brought back to the first respondent on a flat-bed truck. On 14 February 2023, the complainant emailed the first respondent stating she no longer wanted the vehicle. On 22 February 2023, the first respondent informed the complainant that she was not legally entitled to a refund.
16. The first respondent submitted that the faults do not fall within section 53 of the CPA because they were wear-and-tear components. Wear-and-tear components do not render the vehicle in contravention of section 55(2) as these components do not meet the definition of defect under section 53 of the CPA. One cannot predict or prevent wear-and-tear items from failing and can only attend to such failures after they occur, the argument continues. Each issue related to a different vehicle component, proving that every repair was successful. The vehicle was repaired at no cost to the complainant. On each occasion, the complainant chose to have the vehicle repaired and was provided with a courtesy vehicle.
17. The first respondent argued that since the remedies prescribed under section 56(2) of the CPA do not apply to the complainant, the repairs carried out by the first respondent do not fall within the ambit of section 56(3) of the CPA, but under section 57 of the CPA. It asserted that by overfilling the oil by two litres, the complainant or whoever drove the vehicle after 8 February 2023, subjected it to misuse. In accordance with section 18 of the CPA, the first respondent should not be held liable.

18. In its replying affidavit, the applicant denied various averments in the first respondent's answering affidavit. Most notably, it denies the low oil pressure and a failing water pump are wear-and-tear issues. It argued that these are material defects which pose a serious risk of catastrophic and permanent engine damage. It denies that the provisions of section 57 of the CPA are relevant.

THE LAW

19. Section 53(1)(a) of the CPA states:

“**“defect”** means—

- (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.”

20. Section 55(2) of the CPA states:

“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 usable 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. Section 56(3) of the CPA states:

“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 must¹—

- (a) replace the goods; or
- (b) refund to the consumer the price paid by the consumer for the goods.”

¹ Underline inserted for emphasis.

ASSESSMENT OF THE EVIDENCE

22. The evidence presented does not point to a possible contravention of section 57 of the CPA as argued by the first respondent. The provisions of section 56(3) are relevant. They oblige a supplier who repairs any goods or any components of 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 to either replace the goods or refund to the consumer the price paid by the consumer for the goods.
23. The uncontroverted evidence before the Tribunal is that the applicant purchased the vehicle from the first respondent on 9 September 2025. Within six months of purchase, on or about 19 October 2022, the vehicle overheated and was returned to the first respondent. The first respondent collected the vehicle and replaced the water pump without cost to the complainant. After the water pump was replaced, the vehicle was still overheating. A further inspection revealed that the cylinder head gasket had blown. The first respondent replaced it, and the repairs were completed on or about 27 October 2022.
24. In our view, the overheating of the vehicle and the blowing up of the cylinder head gasket within six months of purchase rendered the vehicle less suitable for the purpose for which it was generally intended. The vehicle was not of good quality, not in good working order and was not free of defects. Furthermore, the vehicle was not usable and durable for a reasonable period of time, having regard to the use to which it would normally be put and to all the surrounding circumstances of its supply. Therefore, in terms of section 56(2) of the CPA, the complainant was entitled to demand that the first respondent repair the vehicle.
25. In January 2023, the engine warning light illuminated, and Audi failed to repair the vehicle effectively despite carrying out two stages of repairs. Rotary ultimately carried out the repairs. The central issue in these proceedings is whether these faults that were discovered after the vehicle was repaired for the first time constitute defects as defined in section 53(1)(a) of the CPA. The provisions of section 53(1)(a)(i) are not relevant in this enquiry as there is no evidence that there was any material imperfection in the manufacture of the vehicle. The question is whether any characteristic of the vehicle after it was repaired for the first time rendered it or its components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances as stated in section 53(1)(a)(ii) of the CPA.

26. We disagree with the first respondent's contention that the illumination of the oil pressure warning light in January 2023, the faults that Audi failed to effectively repair the vehicle despite carrying out two stages of repairs, and the repairs that Rotary ultimately carried out were wear-and-tear items. These faults and the steps taken to repair them prove that the vehicle still had characteristics or components that rendered it less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances as stated in 53(1)(a)(ii) of the CPA. In short, it was still defective.
27. As stated, the provisions of section 56(3) are obligatory. They oblige a supplier who repairs defective goods to either replace the goods or refund the purchase price if, within three months after the supplier repairs goods, the failure, defect, or unsafe feature has not been remedied or a further failure, defect, or unsafe feature is discovered. A literal interpretation of the provisions of section 56(3) of the CPA means that the first respondent was supposed to either replace or refund the purchase price to the complainant.
28. In our view, the interpretation we have given to the provisions of section 56(3) does not lead to impractical, unbusinesslike or oppressive consequences or consequences that will stultify the broader application of the CPA.² The legislature did not give suppliers any other option if a defect is not remedied or a further failure, defect or unsafe feature is discovered. It decreed that after the first repairs, the supplier must either replace the goods or refund the purchase price if, 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. Accordingly, in this case, the first respondent was not supposed to repair the vehicle for the second time. It was supposed to offer the complainant a replacement vehicle or a refund. By failing to do so, the first respondent contravened section 56(3) of the CPA.

ADMINISTRATIVE FINE

29. The applicant wants an administrative fine imposed on the first respondent. In terms of section 112(1) of the CPA, an administrative fine may be imposed regarding 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 000 000.00.³

² *Natal Joint Municipal Pension Fund v Endumeni Municipality* (920/2010) [2012] ZASCA 13 (15 March 2012) at para 26.

³ Section 151(2) of the CPA.

30. Section 112(3) of the CPA outlines the factors the Tribunal must consider when determining an appropriate fine. The Tribunal shall deal with each of these factors under the sub-headings below.

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

The applicant alleges that the respondent's conduct was serious because it disregarded various provisions of the CPA and severely prejudiced the complainant. Since January 2023, the complainant has been deprived of the cash paid for the vehicle.

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

The applicant stated in its papers that the vehicle's purchase price was R216 282.50. However, during the hearing, the applicant's and the first respondent's legal representatives conceded that the purchase price was R245 075.00.

30.3. 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 alleges that the first respondent refused to co-operate with the Motor Industry Ombudsman of South Africa (MIOSA). Both the applicant and the MIOSA had to conduct an investigation at a cost to the taxpayer.

30.4. The level of profit derived from the contravention

The first respondent benefited from the purchase price paid by the complainant.

30.5. The degree to which the respondent co-operated with the NCC and the Tribunal

The first respondent co-operated somewhat with the investigation but has done nothing to try to finalise the matter.

30.6. 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.

31. 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 more than two years. The complainant gave the first respondent an opportunity to repair the vehicle, but other defects were subsequently

discovered. The first respondent failed to replace the vehicle or refund the purchase price. There was no reason for the first respondent not to know and implement the provisions of section 56(3) after further defects were discovered in January 2023. Such conduct must be condemned in the strongest possible terms. It must be visited with significant penalties that will, hopefully, deter the first respondent and other suppliers from undermining the rights of consumers.

32. 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 R50 000.00 is appropriate.

ORDER

33. The Tribunal makes the following order:

33.1. The first respondent contravened section 56(3) of the CPA.

33.2. The first respondent's contravention of section 56(3) of the CPA is declared prohibited conduct.

33.3. The first respondent must refund the complainant R245 075.00 within ten ordinary days of issuing this judgment.

33.4. The first respondent must pay an administrative fine of R50 000.00 within sixty business days of issuing 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/396874/2025/73(2)(b) and the name of the person or business making the payment; and

33.5. There is no order as to costs.

Thus, done and dated 8 September 2025.

[Signed]

Dr A Potwana
Tribunal member

Adv C Sassman, Presiding Tribunal member, and Mr S Mbhele, Tribunal member, concur.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

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