

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

Case Number: NCT/417119/2025/73(2)(b)

In the matter between:

NATIONAL CONSUMER COMMISSION

APPLICANT

and

MOTORS & MORE (PTY) LTD

RESPONDENT

Coram:

Dr A Potwana	-	Presiding Tribunal member
Mr S Hockey	-	Tribunal member
Ms Z Ntuli	-	Tribunal member
Date of Hearing	-	30 October 2025

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is the National Consumer Commission (the applicant or the Commission), 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 first respondent is Motors & More (Pty) Ltd, a supplier as defined in section 1 of the CPA. The respondent did not file an answering affidavit and was not represented during 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).

MATTER TO BE DECIDED

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

INTRODUCTION

6. On 5 September 2025, the applicant filed Form Tl.r30A and Form Tl.73(2)(b) CPA with the Tribunal's Registrar (the Registrar). The documents were served on the respondent by hand on 3 September 2025 and on the complainant via email by consent. The complainant's consent to be served by email is attached.
7. In "*Part D: Order sought from the Tribunal*" of Form Tl.73(2)(b) CPA, the applicant stated that it seeks the following orders:
 - 7.1. Declaring that the respondent contravened the following sections of the CPA:
 - 7.1.1. Section 55(2)(b read with section 56(2)(a) and (b); and
 - 7.1.2. Section 51.
 - 7.2. That the respondent's contravention of the above-cited sections of the CPA be declared prohibited conduct.
 - 7.3. That the respondent be interdicted from engaging in conduct in relation to paragraphs 7.1.1 and 7.1.2 above.
 - 7.4. Directing the first respondent to refund the consumer the sum of R19 319.14, which is the cost incurred and paid by the complainant towards the engine assembly and installation.
 - 7.5. Directing the first respondent to pay an administrative penalty in the amount of R1 000 000 (One Million Rands).
 - 7.6. Any other appropriate order contemplated in section 4(2)(b)(ii) of the CPA.
8. The applicant received a complaint from the complainant, Mr Mfundo Ntlombe (Mr Ntlombe or the complainant), who alleged that on 1 June 2022, he entered into a sales agreement with the respondent for the purchase of an engine. On 3 June 2022, the complainant paid the respondent the amount of R12 500.00 for the engine. The complainant arranged for the engine to be delivered to a Retail Motor Industry (RMI) workshop known as Noord Boland Meganiese Dienste for assembly and installation.

9. Noord Boland Meganiese Dienste received the engine on 20 June 2022, removed the original engine from the complainant's motor vehicle, and proceeded to install the newly purchased engine. After the installation, the complainant collected his vehicle and paid the installation costs of R12 425.75 on 4 July 2022. Two days later, while the complainant was driving the vehicle, it stopped functioning and switched off. He informed the respondent. The respondent advised him to return the vehicle to Noord Boland Meganiese Dienste.
10. The complainant made arrangements for the vehicle to be towed back to Noord Boland Meganiese Dienste for assessment. Prior to assessing the vehicle, the technicians informed the complainant that they would charge him R7 800.56 for the removal of the engine. He advised the respondent, but the respondent failed to assist. Consequently, he paid the required amount.
11. When the engine was removed, the complainant was advised that various engine components were defective. These included the oil filter, thermostat, front and rear oil seals, sealant-sump, sump gasket, and spark plugs. The complainant returned the engine to the respondent. The latter replaced it with another engine, which was delivered and received on 1 August 2022 by Noord Boland Meganiese Dienste. The second engine was fitted on 18 August 2022, and the complainant was charged R10 356.56. This amount included the cost of the parts that were replaced.
12. After the installation of the second engine, the technicians established that the second engine was also defective, as the cylinders failed to ignite due to insufficient compression. Consequently, the second engine was removed from the vehicle and returned to the supplier. The complainant was invoiced R8 962.58 for the removal of the second engine.¹ Together with the sum of R10 356.56 that he was charged for the fitting of the second engine on 18 August 2022, the complainant paid a total of R19 319.14 on 28 September 2022.
13. The respondent assessed the second engine and subsequently replaced it with a third engine. When the third engine was installed, the technicians discovered that it was also defective and leaked oil. The respondent refused to replace the third engine, cut off all communications with the complainant, and failed or refused to cover the expenses associated with the defective engines. The complainant had to pay R4 600.00 for the engine to be repaired. As a result, the engine is working properly.

¹ In view of the complainant's oral evidence, this amount was actually for the installation of the third replacement engine.

14. According to the applicant, the complainant wants the respondent to refund him the money he paid for the engine as well as the money paid for the replaced engines. The applicant contends that the respondent contravened section 55(2)(a), (b), and (c) of the CPA because the engines were not suitable for the purpose of propulsion, were not of good quality or free from defects, and were not durable or usable for a reasonable period, as each failed shortly after installation without the any negligent use by the consumer.
15. The applicant alleges that the respondent contravened section 56(2) read with section 55(2) and section 51 of the CPA in that the supplier's terms and conditions excluded its liability for any costs incurred during the engine's installation.

CONSIDERATION OF THE EVIDENCE ON A DEFAULT BASIS

16. On 8 September 2025, the Registrar issued a Notice of Complete Filing and served it on the parties on 9 September 2025. In terms of Rule 13(1) and (2) of the Tribunal Rules,² the respondent was entitled to oppose the application for leave to refer within 15 business days after being served with the application documents. It did not do so. On 8 October 2025, the Registrar issued a Notice of Set Down for the hearing to take place on 30 October 2025.
17. Rule 24(1)(b)(i) of the Tribunal Rules states that "[I]f a party to a matter fails to attend or be represented at any hearing or any proceedings, and that party is not the applicant, the presiding member may continue with the proceedings in the absence of that party." Rule 24(2) of the Tribunal Rules requires that the Presiding Tribunal member must be satisfied that all the parties were properly notified of the date, time and venue of the proceedings before making a decision in terms of subrule (1). On the day of the hearing, the Presiding Tribunal member panel was satisfied that all the parties were properly notified of the date, time and venue of the proceedings. Therefore, the hearing proceeded on a default basis.

THE LAW

18. Section 51 of the CPA prohibits suppliers from making transactions or agreements subject to any term or condition that has, among other things, the general purpose or effect of defeating the purposes and policy of the CPA.

² Published under GN 789 in Government Gazette No. 30225 of August 2007 as amended by GN 428 in Government Gazette 34405 of 29 June 2011 (published in terms of the Consumer Protection Act, 68 of 2008), GN R203 in Government Gazette 38577 of 13 March 2005 and GN 39663 of 4 February 2016.

19. Section 55(2)(a) to (c) 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 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.”

20. Section 56(2) of the CPA states –

“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.”

HEARING AND WITNESS TESTIMONY

21. On the day of the hearing, Ms Magoro requested the complainant to give oral evidence on the issue of the costs he incurred in relation to the alleged defective engine and incidental costs. Mr Ntlombe testified that he paid courier costs in the sum of R660.00 on 15 June 2022, transportation costs in the sum of R600.00 on 28 July 2022, collection costs in the sum of R600.00 on 1 August 2022 and repair costs in the sum of R4,599.31. He stated that the last engine was collected on 1 August 2022, and the defects were discovered on 23 September 2025.
22. After Mr Ntlombe testified on his behalf and as called by Ms Magoro, the Tribunal sought to ascertain from Ms Magoro whether the Tribunal had jurisdiction to adjudicate the conduct alleged to have occurred three years before the Commission referred the complaint to the Tribunal. She argued that the conduct is continuing conduct and was not time-barred by the provisions of section 116(1)(a) of the CPA.
23. Subsequently, the Tribunal decided to recall Mr Ntlombe to clarify when the third engine was delivered and certain discrepancies between his earlier testimony and the averments made in the

applicant's founding affidavit. After he was sworn in, he testified that, although he was not certain, he must have delivered the third replacement engine on 23 September 2025, which is the date appearing on the estimate for R8 962.58 issued by Noord Boland Meganiese Dienste for fitting the third engine. He clarified that the date of 1 August 2022 stated in the applicant's founding affidavit is incorrect and that when he deposed to his confirmatory affidavit, he must have overlooked this discrepancy.

ASSESSMENT OF THE EVIDENCE

24. The evidence presented to us does not point to a possible contravention of section 51 of the CPA. In addition, the applicant has not made out a case for the granting of an interdict. The applicants' prayers in this regard are accordingly dismissed.

25. We turn to consider whether the Tribunal has jurisdiction to consider the allegations that the respondent supplied defective engines to the complainant on 20 June 2022 and 1 August 2022. Section 116(1) of the CPA states-

"A complaint in terms of this Act may not be referred or made to the Tribunal or to a consumer court more than three years after—

- (a) the act or omission that is the cause of the complaint; or
- (b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased."

26. In view of the provisions of section 116(1)(a) of the CPA and the evidence presented to us, we conclude that the complaint in relation to the supply of the first two engines cannot be referred to the Tribunal. The supply of the first two defective engines does not constitute a course of conduct or a continuing practice. Significantly, there is no evidence that the respondent refused to afford the complainant any remedy prescribed under section 56(2)(a) of the CPA. To the contrary, in its own version, the applicant stated that the respondent replaced the first and the second engines. Thus, the respondent afforded the complainant the replacement remedy prescribed under section 56(a) of the CPA. Nothing more needs to be said about this aspect.

27. In view of the undisputed evidence that the third engine manifested defects and rendered the vehicle unsafe to drive such that the complainant left it at the premises of Noord Boland Meganiese Dienste until the complainant could pay for the engine repairs on 23 July 2023, we find that the

respondent contravened section 55(2)(a),(b) and (c) of the CPA. His refusal or failure to refund to the complainant the purchase price constitutes a contravention of section 56(2)(b) of the CPA.

28. It is apposite to mention that the allegation that the respondent failed or refused to cover the costs arising from the defective engines relates to conduct that is time-barred and cannot be referred to the Tribunal. These are:
- 28.1. the courier costs in the sum of R660.00 paid by the complainant on 15 June 2022 for the delivery of the first replacement engine,
 - 28.2. the sum of R12 425.75 paid by the complainant for the removal of the original engine in June 2022,
 - 28.3. the sum of R600.00 paid by the complainant on 28 July 2022 for returning the first replacement engine to the respondent,
 - 28.4. the sum of R600.00 paid by the complainant on 1 August 2022 for the collection of the second replacement engine, and
 - 28.5. the amount of R10 356.56 paid by the complainant for the installation of the second engine.
29. Even though the complainant paid the sum of R10 356.56 on 28 September 2022, the wrongful conduct which occasioned the incurrence of this cost is the supply of a defective engine on 1 August 2022. This act occurred more than three years prior to the Commission referring the complaint to the Tribunal. Thus, the conduct which forms the basis of seeking a refund of this amount is time-barred, and no finding of prohibited conduct can be made in relation thereto. Without a finding of prohibited conduct, there is no basis for the Tribunal to make an order for the refund of this amount.
30. We turn to consider whether we can make an order for the refund of the amount of R8 962.58 that the complainant was charged for the installation of the third replacement engine. The applicant has not presented evidence of wrongful conduct on the part of the respondent, and any loss or harm occasioned by the fitting of this engine. This engine is still fitted in the complainant's vehicle. The only wrongful conduct was the supply of a defective engine, not its installation.
31. In view of the above, it is evident that the complainant did not suffer any loss as a result of the installation of the third replacement engine. In the absence of evidence of loss accessioned by the installation of this engine, there is no factual or legal basis for ordering the respondent to refund the complainant the sum of R8 962. 58 for installing the third replacement engine.

32. Notwithstanding the above, the respondent is liable to pay the complainant the sum of R4 599.30 for the loss he suffered as a result of being supplied the third replacement defective engine. During the hearing, the complainant testified that, due to the failure of the first two engines, he wanted to return the third engine and demand a refund at that point. The respondent refused to assist him and did not respond to his emails.
33. As a result of the respondent's refusal to assist the complainant and due to the substantial amount of money he had already spent on procuring the engine, fitting, and transportation, he was unable to pay for the repairs until July 2023, when the defects were rectified at a discounted price of R4,599.30. Based on the complainant's testimony, we are satisfied that the respondent must refund the complainant the sum of R4 599.30.

ADMINISTRATIVE FINE

34. The applicant wants an administrative fine of R1 000 000.00 to be imposed on the first 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 000 000.00.³ The applicant, however, has not presented evidence of the respondent's annual turnover.
35. Notwithstanding the foregoing, the applicant's failure or neglect to present evidence of the respondent's annual turnover is inconsequential in this case, as we do not think that it would be appropriate to impose an administrative penalty on the respondent. We do so because the respondent provided two replacement engines to the complainant, and it is our view that the respondent should be ordered to refund the complainant the sum of R4,599.30 that he paid for the repair of the third replacement engine.

ORDER

36. The Tribunal makes the following order:
- 36.1. The prayer for declaring that the respondent contravened section 51 of the CPA is dismissed.
- 36.2. The application for an interdict is refused.
- 36.3. The respondent contravened sections 56(b) and 55(a), (b), and (c) of the CPA.

³ Section 151(2) of the CPA.

- 36.4. The first respondent's contravention of sections 56(b) and 55(a), (b), and (c) of the CPA is declared prohibited conduct.
- 36.5. The first respondent must refund the complainant the sum of R4,599.30 within seven ordinary days of the issuing of this judgment and order.
- 36.6. The prayer for the imposition of an administrative penalty is refused.
- 36.7. There is no order as to costs.

Thus, done and dated 31 October 2025.

[Signed]

Dr A Potwana
Presiding Tribunal member

Tribunal members Ms Z Ntuli and Mr S Hockey 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

